53. Because the gypsies of Czechoslovakia were settled, their school attendance was regular and illiteracy had declined sharply. Thus in 1980, there had been 31 per cent illiteracy among persons over 60, 9 per cent in the 30-60 age group and only 5 per cent among gypsies under 30. There had thus been a change for the better, even if gypsy families were less capable than other Czechoslovak families of helping their children with their schooling. In any event, the Government refused to attribute the backwardness often seen in gypsy children to genetic causes and, in order to help them overcome their handicap, it had undertaken to train teachers conversant with the gypsy language. The term "negative socio-pathological phenomena" (CERD/C/172/Add.5, para. 16) should be interpreted as the social consequences of poor hygiene or the result of very young women having children - a frequent occurrence. There was no escaping the fact that a half of the physically and mentally handicapped persons in Czechoslovakia belonged to the gypsy minority and that the crime rate among them was 10 times the average. The latter phenomenon could also be partially explained by the fact that the gypsy grass-roots community structure had broken down.

54. The Government was endeavouring to buttress the traditional gypsy social structures and was encouraging the establishment of businesses by gypsy organizations. For the first time in decades, there was going to be a meeting of the Government and representatives of those organizations at a round-table conference, at which the public authorities and the gypsy representatives would jointly decide on measures to be taken. The circumstances therefore existed for solving the problems facing the gypsy minority within the shortest possible time. If those efforts failed, that community's high rate of demographic growth could create serious problems.

55. Mr. SHERIFIS thanked Mr. Visek for his definition of a gypsy. If, therefore, a gypsy was any person who considered himself to be one, did that mean that a gypsy could relinquish his nationality of origin and claim to be Slovak or Czech?

56. Mr. VISEK (Czechoslovakia) said that at present virtually all gypsies were recorded in the civil register as Czechs, Slovaks or Hungarians; the gypsy nationality could not be used in a declaration.

57. Mr. YUTZIS reiterated his deep concern about the expression "negative socio-pathological phenomena" (CERD/C/172/Add.5, para. 16). If 50 per cent of handicapped children were gypsies, the root cause should probably not be sought only within the gypsy community but also in society as a whole, because what occurred in a minority was somehow a reflection of the attitude of the majority. The public authorities should therefore probably try to modify the Czechoslovak population's concept of the gypsies so that the latter in turn would view themselves differently.

58. Mr. VISEK (Czechoslovakia) said, in reply, that his Government was preparing to undertake a multidisciplinary scientific study in order to throw some light on the very complex problem posed by the gypsy community; the conclusions of that work would appear in the next periodic report of Czechoslovakia.

59. Mr. PAGAC (Czechoslovakia) said that his delegation had answered the Committee's questions to the best of its ability and was well aware that Czechoslovak society was far from ideal. He nevertheless stressed that, in the political process currently under way, the primacy of law was the guiding principle and one of the fundamental concerns of the Government was to ensure that human rights were respected in practice. His Government furthermore intended to ratify article 14 of the Convention and to accede to the European Convention on Human Rights.

60. The CHAIRMAN said he warmly welcomed the Czechoslovak Government's intention to ratify article 14 of the Convention. He thanked the delegation of Czechoslovakia for its cooperation and announced that the Committee had thus completed consideration of that country's tenth periodic report (CERD/C/172/Add.5).

Mr. Kralik, Mr. Plank, Mr. Visek and Mr. Pagac (Czechoslovakia) withdrew.

The meeting rose at 1.10 p.m.

Notes

1/ CERD/C/144/Add.1.

2/ See CERD/C/SR.787.

871st meeting

Friday, 10 August 1990
at 3.05 p.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Third and fourth periodic reports of China (CERD/C/153/Add.2 and CERD/C/179/Add.1) (concluded*)

At the invitation of the Chairman, Mr. Fan Guoxiang and Mr. Wu Shimin (China) took places at the Committee table.

1. Mr. SONG Shuhua, speaking on a point of order, said that the Committee dealt with representatives of States and endeavoured to establish an in-depth dialogue with them. In its discussions with those representatives, members should display an attitude of goodwill. At a previous meeting, however, it would seem that the comments of some members had not reflected such an approach.

2. The Committee was concerned with questions involving racism and racial discrimination and China was a country which had suffered from those practices since 1840. He therefore thought that, in the course of the dialogue with the representatives of China, members should adhere to the Committee's terms of reference and not become involved in political issues.

3. The CHAIRMAN appealed to members to maintain the tradition of the Committee and to exclude a spirit of confrontation from the dialogue.

4. Mr. VIDAS associated himself with the views expressed by Mr. Song Shuhua.

5. Mr. FAN Guoxiang (China) said that his Government had always opposed racial discrimination and recalled that his country had suffered greatly from aggression on grounds of race. Its experience had made it aware of the importance of ensuring the equality of nationalities and of safeguarding national unity. Therefore, in 1982 China had ratified the International Convention on the Elimination of All Forms of Racial Discrimination and fulfilled all the relevant obligations.

6. His delegation had no objection to questions put by members of the Committee in their personal capacity, even those which were not in keeping with the provisions of the Convention. However, his delegation would not reply to comments or questions which sought to teach it a lesson.

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* Resumed from the 869th meeting.

7. Mr. WU Shimin (China), said that his statement would be in two parts, the first relating to the general situation in his country and the second, to the question of Tibet.

8. China had a population of 1.4 billion, including 56 nationalities. The Han people constituted the most numerous nationality.

9. With regard to the question of national autonomy, the principal legal instruments regulating ethnic relations in China were the Self-Government Laws of Nationality Regions of the People's Public of China and national autonomous areas and provinces with large minority populations complied with the provisions of those laws. Each minority area formulated its own self-government regulations. Provinces with mixed and dispersed minority populations also formulated such regulations and the Working Regulations of Dispersed Nationalities of Hunan Province, for instance, stipulated that the administrative arrangements for dispersed minorities must take into account the characteristics of a minority people, try to safeguard the legitimate rights of a minority citizen, and encourage the development of the economy and culture of a minority people. Some local governments had laid down provisions to protect the equality of minority languages, freedom of religious beliefs and respect for local customs.

10. With regard to laws for the elimination of racial discrimination, he said that, under the Constitution, all citizens enjoyed an equal status whatever their nationality.

11. In accordance with the provisions of the law on regional national autonomy, autonomous regions, prefectures or counties were established where one or more minority nationalities lived in a concentrated community. The organs of self-government of national autonomous areas worked out the policies and plans for economic development in the light of local characteristics and needs, and independently arranged for and administered local economic development.

12. With regard to religion, the Constitution stipulated that any civil servant who sought to restrict or hamper the exercise of freedom of religion would be subject to punishment. In accordance with other regulations concerning the disturbance of the civil order, any person who sought to create ethnic unrest or cause any kind of discrimination was liable to punishment.

13. As a result of differences in economic and social development, the situation of various national minorities in the country as a whole was uneven. For example, national minorities in the eastern part of the country lived in better conditions than those in western areas. In addition, minorities in towns and villages were better off than those in the countryside.

14. With respect to education, in 1988, minority students enrolled in higher educational institutions had accounted for 6.1 per cent of the total, whereas in 1950 the figure had been merely 0.93 per cent.

15. All minority nationalities had the right to use their own language in courts of law. The Government had also helped certain national minorities to

develop a written script. In many minority nationality areas, publishing houses, press agencies, and radio and television stations had been set up.

16. The State placed great emphasis on health care in minority areas. In recent years, it had adopted and implemented effective measures specifically designed for those areas for the prevention and treatment of diseases.

17. Family planning was mentioned in the Constitution and was a basic principle in China. Minority couples were allowed to have two children, and in sparsely inhabited areas, they could have three. In border districts, the State did not press family planning and couples were free to make their own decision in that regard.

18. Turning to the subject of Tibet, he recalled that some members of the Committee had raised the issue of the province's political status. In the opinion of the Chinese Government, Tibet had been Chinese territory for many hundreds of years; in any case, the Committee was not competent to discuss the issue of sovereignty. He would, accordingly, confine himself to those questions which dealt exclusively with racial discrimination.

19. In February 1951, two years after the foundation of the People's Republic of China, the local government of Tibet had reached an agreement with the central Chinese Government which had led to the peaceful liberation of Tibet and its incorporation as an autonomous region of the People's Republic of China.

20. In 1959, at the request of the majority of Tibetans, democratic reforms had been undertaken. Previously, Tibet had been a feudal society, in which the monasteries, temples and local government - which represented only 5 per cent of the population - had owned all the land and means of production and had reduced the majority of the population to a state of serfdom. After the reforms, the Tibetans had gained the right to self-government; all the senior officials of the Autonomous Region of Tibet and the local government committees were Tibetans, as were 97.8 per cent of local cadres and the senior officials of all the main government agencies.

21. The Tibetan economy had also been considerably strengthened. In 1959, the value of Tibetan industry and agriculture had been 187 million yuan renminbi; by 1989, that figure had risen to 1.7 billion yuan renminbi. Before 1959, the province had had nothing but a few primary schools; now, it had 4 institutes of higher education, 14 professional and vocational schools, 68 secondary schools and 2,400 primary schools. Those establishments catered for a total of 170,000 pupils, of whom 88.6 per cent came from minority groups. Since 1985, 17 provinces and cities outside Tibet had organized secondary-level education for Tibetan students. There were 3 secondary schools for Tibetan students in Beijing and other cities, catering for 5,200 pupils.

22. Where health facilities were concerned, before 1959 there had been a few small clinics, mainly in the capital, Lhasa; now there were more than 820. There were 9,000 trained medical staff, of whom 73 per cent belonged to minority groups. One of the hospitals, which practised traditional Tibetan medicine, was the only hospital in China where treatment was completely free

for all citizens. Health standards in Tibet had risen considerably, with the average life expectancy standing at 63.7 years, as opposed to 35 in the period before 1959.

23. With regard to culture, there had been no newspapers in Tibet at all before 1959. Now, there were 11 newspapers and 7 periodicals, and over 3 million books had been printed. The number of books in the Tibetan language now stood at 1.85 million, as opposed to only 400,000 in 1965.

24. Some members had asked about immigration into Tibet. The population of the province had been 1.24 million in 1953, and 1,892,393 in 1982, of whom 94.4 per cent were Tibetans and 4.8 per cent were Han Chinese. By 1989, the proportion of Tibetans in the population had risen to 95.5 per cent, while the proportion of Han Chinese had dropped to 3.76 per cent. The total number of Han Chinese living in Tibet now amounted to approximately 70,000. Technicians and other workers went to Tibet to help with the modernization programme, but they always returned to their homes when their work was done. Others went to Tibet on business on a seasonal basis, but they also returned to their homes in due course. It was, therefore, not appropriate to talk about immigration into Tibet.

25. Where population control was concerned, the central Government's family planning policy was not implemented in the agricultural areas of Tibet. Families in those areas received education and advice to improve the health of mothers and children, but there was no limit on the size of the family. Since 1985, the local authorities had advised employees and cadres from minority groups to limit their families to two children, but again there was no mandatory limit. In the most remote areas there was not even any publicity for family planning, and there had certainly never been any cases of forced abortion for women from minority groups. Between 1964 and 1987, the growth rate of the Tibetan population of the province had been considerably higher than the rate for the total population of China.

26. Some members of the Committee had referred to claims by non-governmental organizations that the central Chinese Government had made a profit of some 200 billion yuan renminbi by exploiting the timber, minerals and other natural resources of Tibet. For historical and geographical reasons, the economy of Tibet was relatively backward compared with that of the rest of China. The gross national product of the province had amounted to 1.56 billion yuan renminbi in 1988, with a revenue of 2.26 million yuan renminbi. As the Committee could see from those figures, the central Government would have had to confiscate the province's entire revenue for a considerable number of years to make up the sum it was alleged to have stolen.

27. The truth was that Tibet relied heavily on aid from the central Government; in 1988, that aid had amounted to 1.04 billion yuan renminbi. The mineral resources of Tibet were very limited, so it was impossible for the Government to have earned as much from exploiting the province's minerals as certain non-governmental organizations had claimed. Timber production, too, was very limited; in 1988, it had amounted to only 230,000 cubic metres, which was all required for local use. In fact, raw materials and daily necessities had been imported from the rest of China for many years; for instance, in the period 1959 to 1989, Tibet had imported some 1.7 billion jin of grain.

28. Members of the Committee had asked about discrimination in housing and employment. In Tibet, the average living space for employees and workers was 9 square metres or more. Some people built their own Tibetan-style houses at their own expense, and in agricultural areas many farmers and herdsmen lived in the traditional felt tents. In 11 counties of the Autonomous Region of Tibet, the living space was 9.99 square metres per person, compared with 8 square metres in Beijing and 7 square metres in Shanghai. With regard to employment, there was actually a shortage of labour in Tibet; and there was no unemployment, as some non-governmental organizations and members of the Committee had maintained. Of course, there were some young people who had not yet started work for various reasons; some of them were intending to go on to higher education, and others had not yet decided on a profession. The majority of employees and workers in the province were of Tibetan ethnic origin, and the salaries, benefits and employment protection afforded to Tibetans and Han Chinese were equal in every way.

29. He had to admit that the illiteracy rate in Tibet was 60 per cent, which was much higher than in the rest of China, but in 1951 the rate had been 95 per cent. The educational system was very difficult to administer, owing to the problems of access to remote areas and the nomadic way of life of the herdsmen. The Government had abolished school fees for Tibetans, increased the number of schools and introduced boarding schools, in which tuition, board and lodging were paid for by the State, Tibetans and Han Chinese were taught together, except in language classes. In June 1990, the People's Congress of the Autonomous Region of Tibet had decided that the Tibetan language should be used in primary schools, but that courses in higher grades should be offered in Mandarin Chinese. Language classes in secondary schools were generally taught in Tibetan, and so were other classes as far as possible.

30. Some members of the Committee had asked about the riots which had taken place in Lhasa. They had occurred between 27 September 1987 and 7 March 1989, and the number of people involved had varied from a few dozen to several hundred. The demonstrators had shouted "Independence for Tibet", thrown stones and petrol bombs, seized weapons, set cars on fire and looted shops.

31. To take a specific example, in the riot of 5-7 March 1989, 16 people had died and over 120 had been injured, 24 public buildings and schools had been damaged; 99 shops, restaurants or hotels had been looted or burnt down; and over 200 cars had been destroyed. The incident certainly did not deserve to be called a "peaceful demonstration". It had been instigated by a small number of separatists both inside and outside Tibet, and had not reflected the wishes of the Tibetan people as a whole, most of whom had condemned it.

32. The riots had been against both the law and the Constitution of the country, and in order to preserve national unity, lives and property, the central Government had been obliged to impose martial law from 8 March 1989 to 30 April 1990. The situation in Tibet had since been stable.

33. Mr. FAN Guoxiang (China) said that the Chinese delegation had further tables and statistics, which it would supply to members of the Committee or include in China's next periodic report, as the Committee wished.

34. Mr. WOLFRUM thanked the Chinese representatives for the vast amount of additional information they had provided. It was unfortunate that the information could not have appeared in the third and fourth periodic reports (CERD/C/153/Add.2 and CERD/C/179/Add.1), since that would have made the Committee's work much easier.

35. He considered that he had not received an adequate reply to all of his questions, and he therefore wished to repeat them. Firstly, he had asked who actually governed the autonomous areas in practice. For instance, he would like to know the ethnic origin of the First Secretary of the Communist Party, the military commissar, the senior judges and the senior civil servants of the major autonomous areas.

36. The Chinese representative had stated that the economic situation of the Han Chinese in the autonomous areas was, in general, better than that of the minority groups. He hoped that, in its next report, the Chinese Government would provide detailed statistics in support of that statement, giving details, for instance, of the respective incomes of the Tibetans and the Han Chinese in Tibet.

37. He had asked about the language of education in the autonomous areas. The Chinese representative had stated that an increasing proportion of teaching in the Tibetan Autonomous Region was undertaken in the local language. He would welcome similar information for the other major autonomous areas.

38. He had also asked about freedom of religion. The Chinese representative had said that freedom of religion was of fundamental importance to national minorities and formed part of their national identity. He would like further details about an individual's freedom to enter a monastery, both in Tibet and in other autonomous regions. What was the economic situation of the monasteries? Did an individual need permission to enter one?

39. His final question to the Chinese representatives had concerned family planning policy, and he would like to thank those representatives for their detailed replies on that subject.

40. Mr. YUTZIS said that the lengthy discussion of the Chinese reports had been appropriate in view of the country's importance and the sheer size of its population.

41. Freedom of religion was one of the rights most closely connected with the development of a people's identity, and he would welcome further information on religious training, an aspect of religious freedom which seemed to be problematic in Tibet, although the information available appeared to vary according to its source. The documents of the Commission on Human Rights, for example, gave a picture rather different from that provided by the Chinese periodic reports and the oral presentation of the Chinese representatives, in that the information contained in the Commission documents seemed to indicate that the Government of China imposed severe restrictions on the conduct of religious life in the Autonomous Region of Tibet.

42. Reference was made in paragraphs 32 to 35 of the third periodic report (CERD/C/153/Add.2) to changes of place names, but no details were given as to who took such decisions, and the stated justification seemed scarcely adequate. Place names were an important aspect of cultural identity: the effect of insensitive changes enforced by decree could well be the deculturation of one ethnic group through the imposition of the alien language of another. He would welcome further information on that sensitive issue, and on the equally sensitive question of the involvement of religious people in civil unrest in Tibet, in a future periodic report.

43. Mr. de GOUTTES said that the valuable information just provided by the Chinese representatives could usefully have been incorporated in the third and fourth periodic reports (CERD/C/153/Add.2 and CERD/C/179/Add.1), thus giving members of the Committee time to consider it fully. The Chinese representatives had just stated that copious additional information could be made available, and he suggested that the Committee could make a formal request to the Government of China for its transmission.

44. In connection with possible violations under article 5 of the Convention, he noted that the information provided was at variance with that to be found in a number of reports and other documents prepared by various non-governmental organizations. He hoped that further clarification by the Chinese Government would go some way towards resolving that apparent discrepancy.

45. Mr. FAN Guoxiang (China) said that, due to the lack of time available, he could touch only briefly on some of the issues raised during the discussion.

46. First of all, he thought it worthwhile to point out that the role of the Communist Party in China was to be distinguished from that of the Government, and it seemed to him that the information provided regarding the leadership of central and local legislative and administrative organs was adequate.

47. The documents prepared by the Commission on Human Rights, for example, on the one hand, and by non-governmental organizations on the other, were of course open to varying interpretations, but he did not think it justifiable to assume that the information provided by Governments was incorrect or misleading simply because of its source.

48. Although Tibetans had their own national identity, which the Chinese Government endeavoured to foster, Tibet was an integral part of the People's Republic of China over which the Government exercised, not suzerainty - as one speaker had claimed - but sovereignty.

49. The aim of the policy of introducing new place names was to promote respect for national culture, but he agreed that it should not be pursued coercively.

50. In conclusion, he said that he would transmit to his Government the requests made by members of the Committee for additional information, and that their suggestions would be taken into account when the next periodic report was being prepared.

51. Mr. FERRERO COSTA asked that particular attention in the next periodic report of China should be given to those questions to which replies had not been forthcoming during the consideration of the third and fourth periodic reports (CERD/C/153/Add.2 and CERD/C/179/Add.1).

52. The CHAIRMAN said that, taken together with the discussion in the Committee, the periodic reports submitted by China and the statements made by the Chinese representatives provided a balanced overall picture of the situation regarding implementation of the Convention in that country. The Committee had thus concluded its deliberations on the third and fourth periodic reports of China (CERD/C/153/Add.2 and CERD/C/179/Add.1).

Mr. Fan Guoxiang and Mr. Wu Shimin (China) withdrew.

The meeting was suspended at 17.10 p.m. and resumed at 17.20 p.m.

Fifth and sixth periodic reports of the Republic of Korea (CERD/C/167/Add.1 and CERD/C/192/Add.1) (concluded)

At the invitation of the Chairman, Mr. Lee (Republic of Korea) took a place at the Committee table.

53. Mr. LEE (Republic of Korea), replying to questions raised and comments made at the 870th meeting, said it was his impression from the discussion that some members of the Committee tended to regard a "homogeneous" national culture as either impossible or undesirable. However, the fact that in its 5,000 years of history Korea had never colonized or occupied other countries, and had thus never incorporated other ethnic groups, meant that it had evolved as a genuinely homogeneous society. However, over the centuries, some foreigners had settled in Korea, lending an element of diversity to the national culture.

54. Since there had been no recorded case of racial discrimination in the Republic of Korea and his country had acceded to the International Covenant on Civil and Political Rights and its Optional Protocol, he was optimistic about the prospects of his Government making the declaration under article 14 of the Convention, in accordance with the wish expressed by the Committee, which he would convey to the authorities. Details of measures taken to strengthen human rights safeguards were given in the enclosures submitted with the sixth periodic report (CERD/C/192/Add.1) and, as requested in connection with paragraph 36 of that report (870th meeting, para. 29), the text of the relevant legislation would be duly transmitted to the Secretariat.

55. Regarding Indochinese refugees, some 220 such refugees were accommodated in a camp on the southern coast of the Republic of Korea and were being given care and protection, in close cooperation with the Korean Red Cross Society and the Office of the United Nations High Commission for Refugees (UNHCR). Refugees awaiting resettlement in third countries were being catered for in accordance with UNHCR's comprehensive programme of action.

56. In response to the question about schools for Chinese nationals in the Republic of Korea, exact figures would be supplied later, but of the 53 schools for foreign nationals, he believed more than 20 were specifically

for persons of Chinese nationality. It was difficult to provide an immediate answer to the question about the reasons for the decline in the number of Chinese nationals, but it might be assumed that the active exchanges and trade with Taiwan and its rapid economic growth partly accounted for Chinese emigration to Taiwan.

57. He failed to see the relevance of the question about United States forces stationed in the Republic of Korea, but specified that the United States military presence and status of its forces were governed by the mutual defence treaty signed by the two countries in 1953 and the 1968 agreement, respectively.

58. Replying to the question about possible discrimination against certain provinces, he assured the Committee that his Government pursued a policy of equal treatment for all provinces. Any apparent differences were due to the specific characteristics of the various provinces and cities. The question of local autonomy was considered a matter of great importance by his Government. With the democratization process under way, consultations were being carried out between the Government and opposition parties, and it was expected that the policy for local autonomy would be implemented by the end of 1990 or early 1991.

59. In response to the question about legal safeguards for the implementation of article 4 of the Convention, such safeguards were provided for by the Penal Code. Its article 307, for instance covered defamation and article 311, insults to aliens and nationals alike. Persons found guilty of such offences could even be imprisoned. As stated in paragraph 39 of the sixth periodic report, articles 750 and 751 of the Civil Code also provided for penalties for unlawful acts, covering cases of racial discrimination. He would convey the Committee's concern to his Government, as had been done after the Committee's consideration 1/ of the fourth periodic report. After due consideration, the Government's position had then been that the Constitution and existing legislation and practice fully covered all aspects of article 4 and that there was no need to enact further legislation.

60. The figures concerning the increase in the number of trade unions spoke for themselves, since the number of trade unions had increased from 2,725 in June 1986 to 7,380 in June 1989. On the subject of the minimum wage, the practice was that any firm employing more than 10 persons was required to pay the minimum wage, namely the equivalent of $240. That requirement also applied to foreign nationals, who were treated in the same way as other employees. It should be added that most foreign employees in his country were in well-paid white-collar jobs. Regarding specific legal safeguards for foreign nationals. The latter were guaranteed equal rights under domestic law, as stated in paragraphs 36 and 37 of the sixth periodic report.

61. All freedoms, including freedom of the press and academic freedom, were fully guaranteed under the Constitution and other relevant laws. His Government's positive attitude in that regard was reflected in its recent accession to the two International Covenants on Human Rights and to the Optional Protocol to the International Covenant on Civil and Political Rights.

62. As to providing proof that there was no racial discrimination in the Republic of Korea, he recalled that when his country had hosted the Olympic Games in 1980, hundreds of thousands of foreigners, including journalists, had visited the country, and no instance of racial discrimination had occurred or been reported. Although the Constitution omitted any reference to race, racial issues were certainly covered by the spirit of the Constitution, which, moreover, clearly stated that treaties and the generally recognized rules of international law had the same force as the domestic laws of the country. In reply to the question whether domestic legislation was enacted following the country's accession to international treaties or conventions, he said that the Government did not systematically enact new domestic laws but would take steps to adjust domestic legislation in the event of conflicting provisions.

63. Mrs. SADIQ ALI explained that she had asked about the legal status of United States citizens in connection with the self-immolation of a young student and the possible existence of anti-American feeling, and not at all in connection with the official status of United States forces stationed in the Republic of Korea.

64. The CHAIRMAN thanked the representative of the Republic of Korea and said that the Committee had concluded its consideration of that country's fifth and sixth periodic reports (CERD/C/167/Add.1 and CERD/C/192/Add.1).

Mr. Lee (Republic of Korea) withdrew.

Sixth periodic report of Ethiopia (CERD/C/156/Add.3)

At the invitation of the Chairman, Mr. Tsehai (Ethiopia) took a place at the Committee table.

65. Mr. TSEHAI (Ethiopia) retraced the background to the new Constitution of the People's Democratic Republic of Ethiopia, which had been drawn up with the broad participation of all sectors of the population, as described in part I of the sixth periodic report (CERD/C/156/Add.3). Not only did the Constitution guarantee and protect the rights and freedoms of all Ethiopians, but also enabled the Government to discharge its obligations under the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

66. Since the submission of Ethiopia's sixth periodic report in 1988, significant political, economic and social reforms had been undertaken in the light of the prevailing situation in his country and the major events taking place in the rest of the world. In connection with article 5 of the Convention, he recalled the constitutional provisions described in paragraphs 25 to 27 of the sixth periodic report. On 6 March 1990, the Central Committee of the Workers' Party of Ethiopia had adopted resolutions declaring that Ethiopian economic and social development would henceforth be guided by the principles of a mixed economy and that political life would be restructured to reflect the democratic unity of all classes, nationalities and groups. Emphasizing that peace and respect for the unity and territorial integrity of Ethiopia were critical prerequisites for the realization of the new policy objectives, the Central Committee had urged opposition groups to come forward and participate in efforts to achieve peace and the

implementation of the newly adopted policies. The mixed economy was based on State, private and cooperative ownership. Economic parameters in a context of free competition determined the viability of each enterprise. State enterprises would be authorized to operate with management autonomy and, if they failed to be viable, would be auctioned to the private sector and closed if still unable to prove their viability. The private sector would be given full government backing and there would be no restriction on Ethiopian citizens' investment and participation in all spheres of economic activity. Existing joint venture legislation was to be revised with a view to attracting foreign capital to the extent that it could make a meaningful contribution to Ethiopia's development needs.

67. Existing State trading organizations and enterprises were to operate within a framework of free competition with the private sector. The privileges of the Agricultural Marketing Corporation had been abolished and agricultural products would be freely traded. The same would apply to State enterprises trading in industrial and other commodities. In addition to the basic provisions guaranteeing equal rights, equality before the law and equal participation in political, economic, social and cultural affairs, those reforms would further promote the implementation of the provisions of the Convention and would receive adequate coverage in his Government's seventh periodic report.

68. Mr. SONG Shuhua congratulated the representative of Ethicpia on his introduction and on the sixth periodic report (CERD/C/156/Add.3), which had been prepared in accordance with the Committee's guidelines. Since Ethiopia was a multi-ethnic country, precise figures giving the population breakdown would be needed in order to assess the situation and treatment of the various nationalities. He welcomed the Government's significant efforts to eliminate disparities in the economic development of nationalities, and hoped that more information would be forthcoming on results and experience in that regard.

69. In connection with article 3 of the Convention, Ethiopia's very active stand in regard to the South African regime was to be commended.

70. The educational situation was not entirely clear from the report, and he requested information about the illiteracy rate and school enrolment rates among the smaller nationalities, and also about any measures taken to deal with such problems. The scope of article 5 of the Convention was very broad, and he would welcome information on the participation of the various nationalities in the country's economic, political and social life.

71. In connection with article 7 of the Convention, he requested further information about the manner in which information on the International Convention on the Elimination of All Forms of Racial Discrimination and other international conventions was disseminated. For instance, was such information included in the curricula of middle schools and universities? In conclusion, he expressed the hope that replies to his questions, backed up by figures, would be included in the next report.

72. Mr. ABOUL-NASR, referring to the statement in paragraph 4 of the report that over 40 nationalities had been represented on the Drafting Commission for the new Constitution, requested the representative of Ethiopia to specify, if need be in the next periodic report, what exactly was meant by "nationalities". If, as was stated in paragraph 10 of the report, there were altogether 70 such nationalities, he also wished to know who constituted the remaining 30 which had not been represented and why they had not been consulted.

Mr. Tsehai (Ethiopia) withdrew.

Organization of work (concluded*)

73. The CHAIRMAN said he took it that the Committee acceded to the request of the Government of Iraq to withdraw from the presentation of his country's ninth and tenth periodic reports (CERD/C/159/Add.2 and CERD/C/185/Add.2) on the due date in view of the situation prevailing in the Gulf.

It was so agreed.

The meeting rose at 6.10 p.m.

Notes

* Resumed from the 868th meeting.

1/ CERD/C/144/Add.1; for the discussion of the report see CERD/C/SR.787.

872nd meeting

Monday, 13 August 1990
at 10.10 a.m.

Chairman: Mr. SHAHI

In the absence of the Chairman, Mr. Lamptey, Vice-Chairman, took the chair.

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Sixth periodic report of Ethiopia (CERD/C/156/Add.3) (concluded)

At the invitation of the Chairman, Mr. Tsehai (Ethiopia) took a place at the Committee table.

1. Mrs. SADIQ ALI, said that the prospects for the 1990 cereal and pulse harvests in Ethiopia were good, but according to the United Nations, some 4 million people in the north of the country were still threatened with famine. She therefore asked what steps the Government of Ethiopia was contemplating to prevent famine, given that half of Eritrea and the whole of northern Wollo were in the hands of the rebels, and whether the Government would agree to cooperate with the rebels' relief organizations. In 1974, the Government had nationalized most businesses. The new five-year plan, however, authorized unrestricted investment in almost every area. Did that mean that the Government had changed its policy? What would be the consequences for industry, agriculture and trade? Would the new approach cause unemployment? How did the Government intend to ensure the adequate development of certain ethnic groups?

2. Mr. WOLFRUM wished to have, if necessary in the next periodic report, detailed information on the ethnic and demographic composition of Ethiopia. What impact had the constitutional changes had on minorities? What measures were contemplated to protect those groups? Were the languages of the minorities taught in schools? Were all Ethiopian citizens able to use their mother tongue before the courts?

3. The sixth periodic report (CERD/C/156/Add.3) provided no information on illiteracy. Was that a problem? If so, what was being done to solve it? Did Ethiopia's internal difficulties have an ethnic background? What measures were envisaged to mitigate the effects of the fighting?

4. Mr. de GOUTTES, like Mr. Wolfrum, asked about the ethnic background to Ethiopia's internal difficulties and requested the Ethiopian representative to supplement the information given in paragraph 38 of the sixth periodic report (CERD/C/156/Add.3) by stating how many cases of racial discrimination had been brought before the courts.

5. Mr. VIDAS also thought that it would be very helpful if the next periodic report of Ethiopia could provide specific demographic information; the Centre for Human Rights might perhaps be able to assist the Ethiopian Government in taking a census.

6. Mr. TSEHAI (Ethiopia) thanked the Committee for embarking on a constructive dialogue with his Government.

7. With regard to the demographic composition of Ethiopia, he regretted that he was unable to provide the Committee with any information. Ethiopia was one of the least developed countries and had neither the financial resources nor the know-how to conduct a census of the scope envisaged. The suggestion just put forward by Mr. Vidas was therefore all the more interesting and he would inform his Government of it.

8. In reply to a question from Mr. Song Shuhua (see 871st meeting), on the efforts being made by the Ethiopian Government to bridge the gap between the various ethnic components of the country, he said that the disparity in levels of development had been a legacy of the former régime since there had been no modern infrastructure in the outlying areas of the country in 1974. The Government had set itself the aim of reducing the backwardness of those regions that had been neglected so far and had started major construction projects as well as initiatives in the areas of health and education, for example, in Gambela, in Gemu Gofa and in the Ogaden. Training courses had been set up for 20,000 peasants in Bale, and in Gemu Gofa, a specialized irrigation training centre had been established for farmers.

9. Concerning illiteracy, he said that the Government accorded high priority to education and that, since the national literacy campaign had been launched in 1979, the proportion of the population which knew how to read and write had increased from 7 per cent to 75 per cent. As part of that campaign, which was supported by UNESCO, educational material had been printed in 15 different languages. School attendance was on the rise in remote areas and many teaching institutions had been established.

10. As to the involvement of minorities in political life, the 1974 revolution had overthrown the feudal system, which had kept 86 per cent of the population - in other words, the entire peasantry - in a state of ignorance and dependence. Since that time, they had elected their own representatives, both locally and nationally.

11. Mr. Song Shuhua had asked what the Government was doing to disseminate the principles set forth in the International Convention on the Elimination of All Forms of Racial Discrimination. In reply, he said that while Ethiopia did not have any educational programme dealing solely with human rights and action to combat discrimination, the national media gave broad coverage to activities along the lines desired by the Convention.

12. In answer to a question by Mr. Aboul-Nasr, he explained that the term "nationality" (CERD/C/156/Add.3, paras. 4 and 10) referred to any ethnic group speaking the same language and inhabiting a specific region. Although 42 nationalities had been involved in drawing up the draft constitution

and although the report (ibid., para. 10) referred to "more than 70 nationalities", they were not all of the same size: one ethnic group which was dying out had no more than about 12 members.

13. With respect to the questions of economic reform and food shortage raised by Mrs. Sadiq Ali, he admitted that 4 million persons were threatened with famine in the north of the country but pointed out that the main difficulty was not obtaining food but bringing it to the regions affected by the fighting. The Government's main concern was to save the people at risk. In the Tigre region, it was supporting the joint relief partnership set up by the Lutheran Federation, the Ethiopian Orthodox Coptic Church and the Catholic Church of Ethiopia. In Eritrea, the shortest and cheapest route had been cut off by the rebels, who had refused to reopen the port of Massawa, and it was out of the question - partly because of the cost - to operate a long-term airlift into the region. In launching its new economic policy, the Government had not changed its aims but was endeavouring to remedy the shortcomings and inflexibility of the system set up after the revolution. There was no question of privatizing the large nationalized industries, even if their management had to be made rather more flexibile. In fact, the purpose of the reform under way was to create a mixed economy in Ethiopia.

14. Amharic was the only official language of Ethiopia and at the same time, the only language common to the vast majority of Ethiopians. Although the literacy programmes were not all carried out in that language, it was the only language used in higher education and in the administration. However, an Ethiopian could express himself before the courts in his mother tongue and have recourse to an interpreter. Lastly, in reply to Mr. de Gouttes' comment, he said that he had no figures on the number of cases of racial discrimination that had been brought before the courts and would ask his Government to include that information in the next periodic report.

15. The CHAIRMAN thanked the representative of Ethiopia for answering the Committee's questions, and said he hoped that the next periodic report would include the additional information requested. He declared that the Committee had completed its consideration of the sixth periodic report of Ethiopia (CERD/C/156/Add.3).

Mr. Tsehai (Ethiopia) withdrew.

The meeting was suspended at 10.50 a.m. and resumed at 11.05 a.m.

Eighth and ninth periodic reports of the Netherlands (CERD/C/158/Add.9 and CERD/C/184/Add.4 and 6)

At the invitation of the Chairman, Mr. van Wulfften Palthe, Ms. de Bode, Mr. Stroband, Ms. Abels, Ms. Haimé, Mr. van der Valk, Mr. Vos and Ms. Teekamp (Netherlands) took places at the Committee table.

16. Mr. van WULFFTEN PALTHE (Netherlands) apologized for the fact that the part of the report on Aruba would be submitted late.

17. His country had always participated actively in efforts to eradicate all forms of racial discrimination and therefore regretted all the more the financial difficulties that the Committee was encountering, hindering its monitoring of human rights. He thought steps should be taken against those countries whose contributions were in arrears, and hoped that the Committee could have regular meetings in future.

18. His Government had been actively engaged in combating all forms of racial discrimination during the period covered by the eighth and ninth periodic reports. It wanted minorities to enjoy complete equality of opportunity in employment, education and housing. The elimination of racial discrimination, first of all, required strong legal instruments to punish any discriminatory behaviour towards ethnic minorities. His Government was putting considerable effort into strengthening existing legislation and making it easier for members of minority groups to have recourse to it. More concretely, minorities needed to be guaranteed equal opportunity in the labour market. The Government was, therefore, in the process of drafting legislation on equality in employment.

19. The Government had been conducting a vigorous policy in the area of education. Credit was due for the support it received from non-governmental organizations in combating racial discrimination. NGOs, some of which were government-subsidized, implemented parts of Government policy in areas such as health, education and welfare.

20. His Government was now giving priority to social renewal, in order to facilitate re-employment and to prevent minorities and disadvantaged citizens in general from dropping out of school. The policy of social renewal would be carried out as a concerted effort by the central Government, the municipalities and all the social organizations concerned.

21. He would be ready to provide the Committee with any explanations that might be necessary on the periodic reports submitted by his country.

22. Ms. de BODE (Netherlands) said she was sorry that the Government of the Netherlands Antilles had not previously been able to send a representative to meetings of the Committee. She also said that it had not been easy to draft reports in conformity with the guidelines set. The Government of the Netherlands Antilles was aware of the need for action to combat racial discrimination both nationally and internationally. The Constitution guaranteed protection of the person and property. The population included a wide variety of nationalities because of migration in the early 1920s. The ninth report, CERD/C/184/Add.6, stated that there was complete harmony in the Antillean community; the fact that no case of racial discrimination had ever been reported there did not, however, mean that racial discrimination did not exist at all. Articles 8 and 12 of the Code of Penal Procedure provided for legal remedies in the event of racial discrimination. If moreover, the presumptive victim did not obtain satisfaction, he could, after exhausting all domestic remedies, address a communication to the Committee under article 14 of the Convention.

23. Turning to another area, she said that her Government had financed inter-cultural activities enabling foreign cultural groups to visit the Netherlands Antilles. She added that the schools did not offer specific human rights instruction, but the subject was dealt with under social sciences and was studied as part of the international law programme in the universities.

24. Mr. YUTZIS congratulated the Government of the Netherlands on its efforts to give effect to the Convention. He recalled that the Committee had had occasion to consider a specific case of discrimination involving the Netherlands; as an expert, he had found that the Netherlands had given a perfectly satisfactory reply to the Committee's request. He next discussed various paragraphs of the eighth periodic report (CERD/C/158/Add.9). Paragraph 36 of the report outlined the measures taken by the Government of the Netherlands to strengthen the position of ethnic minorities on the job market. Paragraph 49 stressed that policy on education took account of the fact that children in the Netherlands were growing up in a multi-cultural society, and mentioned laws passed with that in mind. As paragraph 51 stated, inter-cultural education was not a subject but an educational principle which all schools in the Netherlands should respect. Paragraph 58 said that almost every large or medium-sized town had a centre where cases of racism and discrimination could be reported. Paragraph 61 said that media campaigns had made the population strongly resistant to racial discrimination. Furthermore, the decision of the Supreme Court (CERD/C/158/Add.9, para. 74) was the most important taken in the Netherlands in the matter of discrimination since consideration of the seventh periodic report. 1/ Paragraph 84 reported that a bill supplementing the Penal Code, and tightening the provisions against racial discrimination had been drafted. He was pleased that Ms. de Bode was present but regretted that the ninth periodic report on the Netherlands Antilles (CERD/C/184/Add.6) had reached him too late for him to discuss it in detail.

25. On re-reading paragraphs 11, 14 and 17 of the eighth periodic report, he had observed a number of contradictions. Besides, on reading paragraphs 11 and 17 he had noted that the enforcement of certain principles concerning racial discrimination depended on the interpretation of the courts. Thus Netherlands legislation allowed scope for interpretation. Paragraph 17 introduced a distinction between what was done in public and in private, and gave the impression that the ban on racial discrimination as stipulated in the Convention would apply only to activities in public, not to activities in private. He asked the representatives of the Netherlands to provide an explanation of those points.

26. Noting that proceedings had been brought against two evangelists distributing tracts, denigrating Jews (CERD/C/158/Add.9, para. 96), he asked what position the authorities took towards religious organizations or congregations which permitted racist language or propaganda on their premises. He also asked for information on the publicity campaign conducted by the Netherlands Government to bring about "a change in social attitudes ... with a view to eliminating racial discrimination in both public and private spheres" (ibid., para. 18).

27. Paragraph 3 of the eighth periodic report said that the Democratic Centre Party, which had been propagating overtly racist views had failed to win a seat in Parliament in the 1986 national elections. According to information from a non-governmental organization, a new political party, including militant former members of the Democratic Centre Party and again propagating racist views, had appeared on the political scene in August 1989. He asked whether the authorities had imposed sanctions on that Party - which was apparently represented in Parliament - for incitement to racial discrimination.

28. Concerning the withdrawal of subsidies to organizations that were guilty of racial discrimination, he did not see why it was necessary to wait for a court decision to ban the organizations in question (CERD/C/184/Add.4, para. 8). As he saw it, withdrawing subsidies could be very effective as a preventive measure. He also asked if any bans had in fact been declared.

29. Turning to the question of minorities, he asked for details of the quotas (i.e. employment of a certain percentage of people from ethnic minorities in a given field) referred to in paragraph 20 of the eighth periodic report (CERD/C/158/Add.9). He also wished to know the exact unemployment figures and, in particular, what groups were most affected. Unemployment would appear to be three times as high among minorities as among nationals. In addition, the report submitted by the Government of the Netherlands included scant information on the status of the Moluccans and Surinamese.

30. Regarding the status of foreign workers, he asked whether obtaining a work permit automatically led to the issuance of a residence permit, whether "work declarations" (see para. 32 of the eighth report) were routinely granted to people who met the necessary conditions and whether foreign workers who lost their jobs were still covered by social security and could remain in the country.

31. He asked what results had been obtained from efforts by the Government to promote the employment of persons from ethnic minorities in the administration, the police and the army; whether the right to work was recognized in the Netherlands; whether there were many illegal workers; to what groups they belonged; and what attitude the police took towards such people on the fringe of society.

32. He would also like to know whether there were any special problems in areas with a high concentration of ethnic minorities, and that brought him to the question of housing. The Government of the Netherlands said that very little progress had been made in that area. Was there a widespread housing crisis in the Netherlands or did it affect only certain minorities? Why were the Turks and the Moroccans so obviously disadvantaged? It would be helpful to learn how circular MG 88-33, issued to municipalities by the Secretary of State for Housing, Urban Development and the Environment with the aim of improving housing conditions for minority groups, was applied (CERD/C/184/Add.4, para. 25).

33. Regarding the electoral system, he asked what the results of the 1990 municipal elections had been, how far minorities were represented and whether provision had been made for foreigners to participate in provincial or national elections.

34. What had been the results of the proceedings instituted for racial discrimination in 1987 and 1988? Had the National Anti-Racial Discrimination Agency (see CERD/C/158/Add.9, para. 99) drafted new codes of conduct to combat racism in the labour market and elsewhere? Had the psychological tests referred to in CERD/C/184/Add.4, paragraph 35, been adapted in collaboration with the minorities? And, regarding article 3 of the Convention, had the attitude of the Netherlands towards South Africa changed since Nelson Mandela's release?

35. Concerning education, he wondered what had prompted the Government of the Netherlands to put quotation marks around the expressions "white/black schools problem" and "white flight" (ibid., para. 21). He would like more details of "white flight" and its psycho-social aspects, and of the measures being taken by the Government to "ensure that school populations reflect the ethnic composition of the area in which the school is situated" (ibid.). As regards vocational training, he could ill understand why, despite the efforts made, unemployment was still very high among the minorities.

36. Lastly, concerning the Netherlands Antilles (CERD/C/184/Add.6), he said that it was very difficult to get a clear idea of the situation based on just some indicators of just some socio-demographic variables. He did not see why population groups could not be classified in economic terms (ibid., para. 20) and asked for a clarification of that point. It also appeared odd to him that in Antillean society, however tolerant it might be, there was no racial discrimination whatever (ibid., para. 25).

37. Mr. BANTON recalled that in 1989, one State party had interpreted article 1, paragraph 2, of the Convention as meaning that the protection provided by the Convention did not extend to non-nationals. The issue had been debated in the Committee, where it was argued that that exception covered only the liberty of each State to decide who should be its nationals and what privileges they might have. It appeared that the Netherlands' courts followed the latter, stricter interpretation.

38. The cantonal court of Nijmegan, in a case involving a Turk and a bank which had refused to sell him an insurance policy on the pretext that he was a foreigner, had concluded that article 1, paragraph 2, of the Convention did not apply and there had indeed been racial discrimination. A similar case had been brought before the district court of Haarlem: an airline and a travel agency had charged Turkish immigrant workers higher fares than other passengers. The court had ruled that the Constitution and international treaties permitted the State to make distinctions on the basis of nationality, but not private persons. It had therefore concluded that racial discrimination had occurred.

39. In the Yilmaz-Dogan case too, the Netherlands had not challenged the admissibility of the communication submitted to the Committee. If the position taken in those three cases represented the Netherlands' interpretation of article 1, paragraph 2, it would be useful to put it on record.

40. Another aspect of the question deserved to be considered by the Committee. Member States of the European Economic Community granted reciprocal privileges to their citizens. The Nordic countries followed a comparable practice, as did the members of the Commonwealth and certain Arab States. The question was whether such privileges were permissible under the Convention. He felt that it was important to distinguish between citizenship and nationality. He was a citizen of the United Kingdom but of English nationality. In that case, the concept of citizenship was broader than that of nationality. A national of Jordan, on the other hand, might consider himself Jordanian by citizenship but an Arab by nationality. In that case, nationality transcended citizenship.

41. Article 1, paragraph 1, of the Convention said that "racial discrimination" meant any distinction, exclusion, restriction or preference based on "national origin", but it did not mention citizenship. Paragraph 2 of the same article posed problems because it recognized only two categories, citizens and non-citizens, whereas many States now recognized several categories. In Sweden, for example, settled immigrants who were not citizens could vote in local elections. France was considering a similar proposal. Some writers in English had revived an old legal concept which could one day prove to be useful: that of a "denizen" which, according to the Oxford English Dictionary, was "one who, though not a native, is at home in any region". In his opinion, article 1, paragraph 2, of the Convention exempted State differentiation between citizen, denizen and alien. It did not entitle any other body or person to say that, because the State had made such a distinction, that body or person could use race, colour, descent or national or ethnic origin as a basis for treating them less favourably.

42. He asked, furthermore, whether the Netherlands felt there was a lesson to be learnt from the Yilmaz-Dogan case. For example, could the procedure followed in such cases be simplified? Would it not have been better for the petitioner's lawyer to come to a private settlement with the employer? Had the implications of the case and the Committee's opinion been discussed by judges and prosecutors?

43. He would like to hear the views of the National Anti-Racial Discrimination Agency (CERD/C/184/Add.4, para. 33) on the Yilmaz-Dogan case. He welcomed the fact that various codes of conduct had been drafted in order to prevent racial discrimination, but felt that a uniform code of conduct for all employers would be found necessary, as in Great Britain. He wondered how the authorities in the Netherlands could monitor the success of their efforts to bring more members of minority groups into Government service, especially the police, if the ethnic origin of civil servants and public officials was not recorded anywhere.

44. He would prefer the "white/black schools" problem (ibid., para. 21) to be couched in different terms and described in more detail. The problem also arose in Great Britain, as demonstrated by the case of a mother who had asked for her child to be moved to a different class, because the one he was in had too many children of Pakistani origin. The education authorities in that case had decided that the right of parents to choose their child's school took precedence over the right to protection against discrimination. The Commission for Racial Equality had appealed that decision.

45. Like Mr. Yutzis, he regretted that a minister was no longer empowered to withdraw subsidies to an organization which advocated racial discrimination and that such a measure could no longer be taken unless the organization was dissolved by decision of a court. Prompt action was necessary where discrimination was concerned.

46. Mr. SHERIFIS congratulated the Government of the Netherlands for following the Committee's guidelines faithfully in its eighth and ninth periodic reports. He was pleased that the Government had supported the Committee's opinion in the Yilmaz-Dogan case.

47. He asked why the proportion of foreigners resident in the Netherlands was increasing steadily. What was the attitude of the Government to that increase? He also wished to know to what extent citizens of the Netherlands belonging to ethnic minorities were represented in the Government, the Parliament and the civil service.

48. Mr. WOLFRUM asked whether the fact that the ethnic origin of Netherlands passport-holders was not recorded anywhere was the result of a ban (see CERD/C/158/Add.9, para. 9) and he asked how the Government of the Netherlands could give special protection to Netherlands citizens belonging to ethnic minorities under those circumstances.

49. He also asked for details on the economic and social situation of ethnic groups, especially in the matter of unemployment and employment. Furthermore, what measures was the Government taking to help minorities find housing?

50. Were there any statistics giving a breakdown of crime by ethnic group?

51. Whereas, in 1987, 27,500 foreigners had acquired Netherlands nationality, only 9,800 had done so in 1988. Was that change due to a shift in policy, and did it explain the increase in the number of foreigners which Mr. Sherifis had remarked on?

52. Why had the number of complaints of racial discrimination recorded by public prosecutors' offices increased from 63 in 1987 to 101 in 1988?

53. He also asked for more information about the group of young racists called "Jongeren Front Nederland" and about the new political parties, including the Democratic Centre Party. He inquired whether they could disseminate their racist ideas through the media and whether they were subsidized by the Government like other organizations.

54. Mr. VIDAS asked whether the manifestations of racism referred to in paragraph 3 of the eighth report (CERD/C/158/Add.9) were substantial, and whether they had occurred more often than during the period covered by the seventh periodic report.

55. Mr. FERRERO COSTA maintained, in respect of the opinion that no priority had been established among the various principles laid down in international human rights instruments (CERD/C/158/Add.9, para. 11), that specific provisions took precedence over general ones; on those grounds, the State could never allow the principle of non-discrimination to be undermined in the

name of freedom of expression, association or assembly. The prohibition of racial discrimination was or should therefore be considered a rule of jus cogens and strictly applied by States parties, in keeping with articles 2 and 4 of the Convention.

The meeting rose at 1.05 p.m.

Notes

1/ CERD/C/131/Add.7 and 10; for the discussion of the report see CERD/C/SR.766, 767 and 769.

873rd meeting

Monday, 13 August 1990
at 3.05 p.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Eighth and ninth periodic reports of the Netherlands (CERD/C/158/Add.9 and CERD/C/184/Add.4 and 6) (concluded)

At the invitation of the Chairman, Mr. van Wulfften Palthe, Ms. Teekamp, Ms. de Bode, Ms. Haimé, Ms. Abels, Mr. van der Valk, Mr. Stroband and Mr. Vos (Netherlands) took places at the Committee table.

1. Mr. LECHUGA HEVIA drew attention to the apparent paradox between the reported decline in the number of court cases against racist organizations and racist propaganda and the increase in racist propaganda in the Netherlands, where there was even a party with a racist ideology. He requested further information on that point, since racist propaganda often had very serious social consequences, including attacks on the physical integrity of members of ethnic minorities, and clearly constituted a violation of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. With the upsurge of racist movements and propaganda, the impression was that all the reported measures to combat racial discrimination were ineffectual.

2. Any report which did not contain specific statistics was incomplete, and he requested precise figures comparing the status of all ethnic minorities with that of the majority in such areas as child morbidity and mortality, life expectancy, literacy and illiteracy rates, average income, unemployment, juvenile delinquency, social security coverage and housing.

3. Mr. AHMADU, expressing appreciation for the clear, comprehensive reports, asked why, in table 1 in the eighth periodic report (CERD/C/158/Add.9), Tunisia was classified under Europe, while Egypt and Morocco were listed under Africa. The list of minorities given in that table was, in fact, far from complete. To his knowledge, for example, there was a substantial number of South Africans of Afrikaner descent living in the Netherlands.

4. The reply given in the ninth periodic report (CERD/C/184/Add.6) failed to satisfy him entirely about the status of Aruba, and he wished to know its exact legal status within the Kingdom of the Netherlands. On the subject of labour mobility in the Netherlands Antilles, he wondered whether officials working in any one of the islands could be transferred to the Kingdom of the Netherlands, and vice versa. Regarding population trends in the Netherlands Antilles, he inquired about the causes of the decline in the population of Curaçao and the doubling of the population of St. Maarten during the period since the submission of the previous report.

5. Referring to paragraph 9 of the eighth periodic report, the classification of certain minorities, such as persons of Surinamese, Moluccan or Indonesian origin, remained somewhat unclear, and he wished to know whether they were regarded, for instance, as aliens or citizens, or whether they came into another category.

6. He wished to know whether the "work declaration" referred to in paragraph 32 of the eighth periodic report covered foreigners working in diplomatic missions and international organizations like the International Court of Justice.

7. Significant efforts had been made to improve the representation of minorities in the police force through training and recruitment programmes, but figures were needed, in terms of percentages or absolute numbers, in order to assess the extent of that effort.

8. Mr. de GOUTTES said that credit was due to the Government of the Netherlands for its exhaustive reports. The bill containing supplementary provisions of the Criminal Code dealing with discrimination had been referred to in paragraphs 84 and 94 of the eighth periodic report (CERD/C/158/Add.9) as having been submitted to the Council of State, and in paragraph 27 of the ninth periodic report (CERD/C/184/Add.4), over a year later, as being "currently before Parliament"; he would like to know the reasons for the long delay in so important a matter.

9. The question of "white/black schools" - a term criticized by some speakers - referred to in paragraph 55 of the eighth periodic report and paragraph 21 of the ninth periodic report (CERD/C/184/Add.4) raised a very delicate and important problem of group psychology and one which was shared by other countries with a large immigrant population. The Netherlands was very advanced in the fight against racial discrimination, and it would be useful for the Committee to know more about the way it was endeavouring to solve the problem in the school context.

10. Like Mr. Yutzis (see 872nd meeting), he sought information about the existence of racist organizations and groups and the expansion of their activities, particularly among young people, who were reportedly involved in violent conflicts with young immigrants.

11. Reports about possible discrimination in the distribution and allocation of housing to immigrant minorities prompted him to ask what measures, if any, were being considered in that regard.

12. Mr. GARVALOV said that he had been impressed by much of the information and many of the statements contained in the eighth and ninth periodic reports (CERD/C/158/Add.9 and CERD/C/184/Add.4 and 6), and would bring them to the attention of the Government of Bulgaria, which was now set on the road to democracy. For instance, the people of Bulgaria, who sometimes took a rather simplistic view of democracy, could take a lesson from the cautionary statement in paragraph 13 of the eighth periodic report (CERD/C/158/Add.9). He also welcomed the consistent use of the term "foreign nationals", which was a clear, readily understandable concept, although he requested an explanation of the distinction between "ethnic minorities" and "foreign nationals" in

paragraph 7 of the ninth periodic report (CERD/C/184/Add.4). He recalled the difficulties encountered by the Commission on Human Rights in establishing a suitable definition of minorities on ethnic, linguistic or other grounds. He wished to know whether minority status could be legally invoked before the courts and also as a matter of public knowledge. The reports before the Committee referred to measures taken by the Government to improve the situation of foreign nationals and members of ethnic minorities, and in that connection he drew attention to the distinction between special measures and special rights. He himself had been party to lengthy discussions at the meeting of the CSCE Conference on the Human Dimension in Copenhagen in June 1990, at which he had noted a growing feeling among the 35 participating countries that minorities were entitled to special rights and not merely special measures. Although that concept had not found its way into the final document 1/ of that meeting, he wished to know whether the Government of the reporting State would be prepared, within the purview of its own legislation and jurisdiction, to acknowledge such special rights.

13. He asked whether it was permissible, within the constitutional and legislative framework of the Netherlands, to form political parties on the basis of ethnic origin.

14. He associated himself with some of the views expressed by Mr. Banton on the question of citizenship and nationality (872nd meeting, para. 40). He himself felt there was a clear distinction between the two, but was at a loss for a precise definition.

15. Finally, he expressed satisfaction with the replies provided in the ninth periodic report to the questions raised by the former Committee member, Mr. Karasimeonov.

16. Mr. RESHETOV said that the Netherlands reports were remarkable for their self-critical approach and sincere endeavour to answer in full all the questions raised by Committee members when considering the previous periodic report. 2/ The Committee could make considerable progress in fulfilling its mandate if other reporting States were to follow that example. He also appreciated the attention paid by the Netherlands authorities to conflicting civil and political rights, especially the need to reconcile the eradication of racial discimination with freedom of opinion and expression. From a legal point of view, the limitation of the right of free expression in the interest of protecting another right, such as that of a minority, was merely a formal limitation. An example of the Netherlands progressive approach to democracy was the participation by foreigners in municipal elections. In his own country there was a regrettable tendency among those claiming to advocate democracy to begin by restricting the rights of other members of society, including fellow-citizens. The Netherlands Government's policy of affirmative action was also to be commended, as was the information provided on judicial practice in dealing with racial discrimination.

17. Some points had been inadequately reported, in particular with regard to national minorities. No information had been provided, for example, on Jewish or Gypsy groups. He hoped that further information would be provided in the next report, for instance, on the use of national languages. Referring to

paragraph 8 of the part of the ninth periodic report (CERD/C/184/Add.6) dealing with the Netherlands Antilles, he asked whether it was possible for children to learn languages other than Dutch. A final point which required clarification was the statement in paragraph 12 of the same report that the component parts of the Kingdom might, if they wished, accede to membership of international organizations, although it was the Kingdom that would act on their behalf. Legally speaking, membership of an international organization would confer upon those component parts the character of subjects of international law.

18. Mr. LAMPTEY associated himself with the congratulations expressed by other members to the Netherlands Government on the quality of its eighth and ninth periodic reports (CERD/C/158/Add.9 and CERD/C/184/Add.4 and 6).

19. With regard to the question of conflicting civil and political rights, he agreed that the position, as set out in the eighth periodic report (CERD/C/158/Add.9), was largely correct and that the principle of non-discrimination, freedom of expression and the right of association and assembly were civil and political rights of equal validity. It was necessary to guarantee a carefully balanced relationship between the exercise of one right and respect for another. The exercise of the right of freedom of expression and assembly should not lead to injury resulting from discrimination. In that event, the question whether the exercise of one basic right had in fact violated another basic right would be a matter to be decided by the courts.

20. In his opinion, it would be wrong to put the burden of proof on the victim of racial discrimination. A person whose exercise of a basic right had led to racial discrimination should bear the burden of proving that his action did not constitute racial discrimination. He would therefore recommend the State party to examine closely the decision of the Danish Supreme Court that freedom of expression could not take precedence over protection against racial discrimination.

21. With respect to article 1, paragraph 2, of the Convention, the distinctions, exclusions, restrictions or preferences made by a State party between citizens and non-citizens were very limited. The provision was only a codification of international law as it existed at the present time. Under the constitutions and laws of all States, citizens had certain duties and certain privileges, and they should not be confused.

22. The CHAIRMAN, speaking in his personal capacity, expressed appreciation of the eighth and ninth periodic reports (CERD/C/158/Add.9 and CERD/C/184/Add.4 and 6) submitted by the Government of the Netherlands.

23. He took special note of paragraph 18 of the eighth periodic report (CERD/C/158/Add.9), which was an admirable expression of the Government's policy.

24. He agreed that the Netherlands Government should take note of the decision of the Supreme Court of Denmark concerning the relationship between the exercise of one right and respect for another. It should be noted, however, that in respect of the International Covenant on Civil and Political

Rights, to which he believed the Netherlands was a party, the Government had set forth its limitations on the exercise of the rights in question and its legislation was therefore in full conformity with that instrument.

The meeting was suspended at 4.05 p.m. and resumed at 4.20 p.m.

25. Mr. van WULFFTEN PALTHE (Netherlands) said that his delegation welcomed the dialogue with the Committee.

26. With regard to the constitutional structure of the Kingdom of the Netherlands, he said that it dated back to 1954, when it had been decided by the Netherlands, Suriname and the Netherlands Antilles (then including Aruba) to etablish a new constitutional order, embodied in the Charter of the Kingdom, under which they would conduct their internal affairs autonomously and in their common interests on a basis of equality. Thus, the Kingdom, while remaining a single sovereign entity under international law, had come to consist of three coequal partners which had distinct identities and were fully autonomous in their internal affairs. Since then, two important changes had taken place. In 1975, Suriname had decided to leave the Kingdom and become a full State in its own right. In 1986 Aruba had become a separate country within the Kingdom, under the Charter, and therefore had the same constitutional status as the two other countries.

27. The Charter, the highest constitutional instrument of the Kingdom, was based upon voluntary acceptance by the three countries. It had three essential parts. The first defined the association between the three countries, which was federal in nature. The second dealt with the relationship between the parties as autonomous entities. The third part defined the autonomy of the countries, which was the principle underlying the Charter.

28. Ms. TEEKAMP (Netherlands), referring to Netherlands policy concerning South Africa, stressed that the Netherlands was a member of the European Economic Community and therefore subscribed to the statement made by the European Council, which greatly welcomed the significant changes that had taken place in South Africa in recent months: the release of Nelson Mandela and other political prisoners; the removal of the ban on political organizations; the substantial lifting of the state of emergency; the commitment by the Government to abolish the apartheid system and to create a democratic and non-racial country; and its willingness to enter into negotiations on the future of South Africa with the representatives of the majority.

29. The objective of the European Community was the complete dismantlement of the apartheid system by peaceful means and its replacement by a united, non-racial and democratic State in which all inhabitants would enjoy common and equal citizenship and where respect for universally recognized human rights would be guaranteed. The Community welcomed the joint commitment by the South African Government and the ANC to stability and a peaceful process of negotiation. It was the intention of the Community and its member States to encourage by every means available to them the early opening of negotiations leading to the creation of a united, non-racial and democratic South Africa.

30. At its meeting in Strasbourg on 8 and 9 December 1989, the European Council had decided 3/ that the Community and its States members would maintain their pressure on the South African authorities in order to promote the profound and irreversible changes they had repeatedly sought. The Council had affirmed its willingness to consider a gradual relaxation of such pressure when there was further clear evidence that the process of change already initiated was continuing in the direction called for at the Strasbourg meeting. The Council held the view that the new South Africa had the potential to act as a stimulus for growth in the southern African region. It looked forward to being able to welcome in the near future a new, democratic and economically prosperous South Africa as it took its proper place as an African nation in the international community.

31. Ms. de BODE (Netherlands) said that the periodic reports of the Netherlands must be regarded as incomplete, since the Government had not succeeded in providing exhaustive information concerning the Netherlands Antilles. One reason was that the Government had devoted considerable efforts in the past decade to reducing the high level of underemployment in the Antilles. Persons in the 20-29 age group constituted the main category of the unemployed. Since no classification had been made of population groups in economic terms, it was not possible to indicate the position occupied by the 7 per cent of non-nationals in the group of unemployed in the Antilles.

32. The Government pursued a restrictive admission policy in the Netherlands Antilles. Non-nationals were required to have a work permit, which was in most cases for a specific period. The result was that those persons generally left the Antilles upon the termination of their contract. The Government was currently preparing for a new census, which would enable it to provide the necessary data in its next report.

33. Labour mobility and staff transfers existed between the islands. It was clear that the shift in population was due to the economic situation in the Netherlands Antilles and, in that connection, she said that the population of Curaçao had decreased in the past few years while that of St. Maarten had increased. Tourism was one of the main explanations for the economic growth experienced by St. Maarten. The high unemployment rate in Curaçao had been one of the chief reasons why certain groups had decided to leave the Antilles and to go abroad in search of better economic opportunities.

34. Ms. HAIME (Netherlands), referring to her Government's statement that, under the Constitution, no hierarchy existed between the various human rights and to its opinion, mentioned in paragraph 15 of the eighth periodic report (CERD/C/158/Add.9), that the prohibition of racial discrimination could not be subordinated to other fundamental freedoms, said it must therefore be concluded that, in her Government's view, the prohibition of racial discrimination could in certain circumstances justify limitations on other fundamental freedoms. That did not, however, mean that a hierarchy existed. It was a matter of weighing the interests that were to be protected by the several rights involved. The freedom of the individual to live according to his own beliefs and ideals as such was not laid down in the Constitution but was reflected in several other fundamental rights such as freedom of expression and freedom of religion, association and assembly. Those rights were equally guaranteed to everyone.

35. In weighing the interests which those rights sought to protect, the legislator had not thought it appropriate to endorse freedom of association in regard to admission of members. However, where associations participated in public life, for example, on the labour market or in areas of housing, education, etc., or in organizing events open to the public, the law would be fully enforced. The applicable law was the Criminal Code or the Civil Code and would also include the future equal opportunities legislation. The same was true with regard to prohibition of racial discrimination in the private sphere, which meant that the prohibition of such discrimination applied to private persons acting in the public sphere. It was clear that the Netherlands Government rejected racial discrimination in both the public and private sphere, but the private sphere was not considered to be an area that could be regulated by law. As there was no clear borderline between the public and private spheres, it was for the courts to decide whether certain expressions had been used in public. The Government gave no ruling on the content of expressions, regarding that as a matter for the courts. No preventive measure could be taken by the Government to preclude the use of certain expressions. In that connection, she pointed out that article 7 of the Constitution prohibited any requirement to obtain prior permission for the exercise of freedom of expression.

36. The new coalition Government appointed in November 1989 had withdrawn the original draft of the Equal Opportunities Bill, referred to in paragraph 9 of the ninth periodic report (CERD/C/184/Add.4). A new draft was currently being considered by the Council of State, and it was hoped to submit that draft to Parliament before the end of the year. The new bill covered essentially the same area as the old one, except that it gave a more precise definition of exceptions to the general rule of equal treatment for all. Educational establishments or organizations based on religious or philosophical principles, as well as political organizations, were not allowed to set specific conditions concerning the staff they employed if those conditions might lead to discrimination on the sole ground of race or a number of other criteria. She felt that, in the above-mentioned area, the new bill had adequately responded to the criticisms made of its predecessor.

37. Another area in which the new bill differed from the original draft was that of recourse for individuals who felt that they had been subjected to discrimination. It was important for individuals to have a simple procedure for submitting complaints to a special authority. The new bill, therefore, provided for the creation of a committee on equal opportunities, which would investigate complaints of discrimination and give its opinion on whether an offence had been committed under the equal opportunities legislation. The committee would also be empowered to request the courts to declare discriminatory behaviour unlawful and award damages to the victims.

38. The bill to regulate State subsidies to political research institutes working on behalf of specific political parties, mentioned in paragraph 8 of the ninth periodic report (CERD/C/184/Add.4), was still before the Upper House of Parliament. For the time being, therefore, a subsidy could be withdrawn only if the political party or organization concerned had been banned because its aims or activities were incompatible with public order.

39. The national anti-racial discrimination agency had suggested that the current state of affairs might be incompatible with article 2, paragraph 1 (b), and article 4 of the Convention, since it allowed a party with racist views to broadcast those views during an election campaign and to receive a subsidy for its research institute. However, the right to freedom of speech required that any political party registered for elections should be given broadcasting time and that action could not be taken against it until after it had expressed racist views. In the specific case referred to by the anti-racial discrimination agency, the civil court had ordered the political party concerned to pay damages, and it had subsequently lost its seat in the Lower House of Parliament at the 1986 elections. Subsequently, however, a new party had been formed, which had won a seat at the 1989 elections. The research bureau of that party would continue to receive a State subsidy unless the courts declared the party or the research bureau illegal. The Netherlands Parliament had discussed whether such situations were inconsistent with article 2, paragraph 1 (b), and article 4 of the Convention, and had concluded that the decision whether a party was racist must be left to the courts.

40. In response to the question put by Mr. Garvalov, she could say that it was possible to set up a political party which aimed to improve the position of a particular group. However, such parties were not allowed to choose a racially discriminatory name, since that was considered to be detrimental to public order. Nor could the manifesto of such a party express racist views. The decision on what constituted a racist view must be taken by the courts after those views had been expressed, since it was not considered democratic to allow the Government to take preventive action.

41. In an attempt to increase the proportion of public servants from ethnic minorities, the Government had introduced the EMO plan (Employment for Ethnic Minorities in Public Service) and the 1,000-job plan for Moluccans. The former was designed to increase the number of people from ethnic minorities employed by the public service to 14,500, or 3 per cent of the total, by the end of 1990. The policy was coordinated by the Ministry of Home Affairs, and every ministry had a specific target to meet. The latter plan was designed to create 1,000 jobs for Moluccans in public service in the provinces and municipalities, semi-public enterprises and government-subsidized institutions; 300 of those jobs were in the central civil service.

42. No figures were yet available to show the effectiveness of the measures, mentioned in paragraph 14 of the ninth periodic report (CERD/C/184/Add.4), to increase the proportion of persons of non-Dutch origin in the police force.

43. The Government considered that unnecessary registration of a person's ethnic origin was an invasion of privacy. Only where information was required for the successful implementation of the minorities policy would short-term monitoring be allowed under strict conditions. A survey specifically relating to ethnic minority groups must be designed to promote measures to reduce the disadvantages or discrimination suffered by ethnic minorities; it was always for a limited period and must always be followed up by specific measures.

44. Although there had not been a systematic survey of the ethnic origin of the population in the Netherlands, a good deal of information, mostly based on the criteria of nationality and/or place of birth, had been collected by

census authorities, the police, employment agencies, the courts, banks, industry, etc. All such information was covered by the 1988 Personal Data Registration Act, which sought to protect the privacy of the individual. Information based on nationality and place of birth was not entirely accurate, since it did not reveal second-generation members of ethnic minorities. She hoped that she had made it clear why her delegation had not been able to provide information on individual minority groups.

45. Finally, she wished to give some information about the results of the 1990 municipal council elections. In 35 municipalities, some 50 foreigners had been elected as councillors, of whom approximately 45 were from ethnic minority groups.

46. Ms. ABELS (Netherlands), referring to prosecutions for racial discrimination offences, said that the guidelines issued in 1984 to the police and the public prosecutor's department in cases of racial discrimination were among the strictest of all policy guidelines relating to the criminal law. The police could usually take action only after an offence had been committed, and only if the victim officially reported the incident. In many cases, offences related to matters which were not actively controlled by the police, for instance, where people were refused entry to discothèques because of their colour or where racist pamphlets were distributed or sent through the mail.

47. According to the guidelines, every offence reported must be referred to the public prosecutor's department. She could not explain why the number of complaints by victims had decreased in recent years. The Minister of Justice had announced a forthcoming evaluation of the official guidelines and research into the effectiveness of prosecution in preventing racial discrimination offences. The official guidelines would be revised when the new bill supplementing the Criminal Code had been passed.

48. There had been complaints about the handling of allegedly racist statements made by the political party, the Democratic Centre Party, during the 1989 general election campaign. The chief public prosecutor in The Hague was due to begin a pre-trial investigation of the case, and he might also be called upon to coordinate the action taken in response to similar complaints brought in other cities of the Netherlands.

49. It had also been alleged that the new provisions of the Civil Code under which illegal organizations could be banned were not effectively used. During the parliamentary debate on the draft provisions in 1987, all the political parties had urged extreme caution in using them against any political group. The public prosecutor's department would, consequently, have to be very sure of its ground before it tried to ban any political party. The new provisions had not yet been used against any organization deemed to hold racist views.

50. Mr. Banton had raised the issue of three judicial sentences imposed by the courts of Haarlem and Nijmegen (872nd meeting, para. 38). The scope of criminal law and the extent to which it could be applied in relations between civilians had been extensively discussed during the parliamentary debate on the bill supplementing the Criminal Code. The Ministry of Justice had endorsed the position taken by the Haarlem and Nijmegen courts in imposing those sentences.

51. The bill supplementing the Criminal Code introduced a specific penalty for civil servants who were guilty of discrimination while on duty. The penalty for intentionally discriminatory behaviour by an official, a civil servant or a member of a specified profession had been increased, and such discrimination would henceforth be treated as a more serious offence. The bill, first submitted to Parliament in 1987, had been passed by the Lower House of Parliament in June 1990, and was to be discussed by the Upper House before the end of the year. The long delay had been caused by the change of government and the length of the parliamentary agenda.

52. Finally, she wished to comment on the increase in the number of requests for Netherlands citizenship. There had been no change in the Government's policy on naturalization requests, and she believed that the increase in the number of requests was purely coincidental. The Netherlands had recently passed a new citizenship law, and it might simply be that requests submitted under the old law had been dealt with quickly in order to dispose of them.

53. Mr. van der VALK (Netherlands) said that he wished to answer the questions on education asked by Mr. Yutzis (ibid., para. 35), Mr. Banton (ibid., para. 44) and Mr. de Gouttes (para. 9 above). The terms "white flight" and the "white/black schools problem" (CERD/C/184/Add.4, para. 21) had been used in an attempt to simplify a very complicated situation, in which white families refused to send their children to local schools with a large proportion of ethnic minority pupils. It was a fundamental principle of the Netherlands Constitution that parents should be free to choose their children's school. Anyone was free to set up a school, provided that the teaching staff and the curriculum met government standards, so schools had been set up by many religious groups, which were free to admit or refuse pupils as they liked. However, under the new Equal Opportunities Bill, they were forbidden to discriminate solely on the grounds of race.

54. The Government had concentrated on positive action to improve facilities at schools with a large proportion of ethnic minority pupils. Such schools received extra teachers, buildings, teaching materials, etc., which enabled them to provide five hours' teaching a week in the minority group's own language and culture. Many municipal authorities had taken measures to promote a better balance between Dutch and ethnic minority children in the country's schools. However, the situation would take generations, rather than a few years, to correct.

55. Mr. STROBAND (Netherlands) said that several members of the Committee had asked about the employment situation of ethnic minority groups in the Netherlands. Detailed statistics were not always available, and those which were available were often based on the distinction between foreign citizenship and Netherlands citizenship, rather than on actual ethnic origin. However, some quantitative and other information had been gained from research and by comparing the statistics which had been compiled.

56. The number of foreign nationals in the Netherlands as at 1 January 1989 was approximately 623,500, or 4.2 per cent of the population. The number of people from ethnic minorities on the same date was 750,000, or 5.1 per cent of the population. Of those, 177,000 were Turks, 140,000 Moroccans and 270,000 people from Suriname and the Netherlands Antilles (most of whom had

Dutch citizenship). Those three groups made up a total of 587,000 people, or almost 80 per cent of the foreign population. Thirty-eight per cent of them lived in the four biggest cities of the Netherlands (Amsterdam, Rotterdam, Utrecht and The Hague).

57. The number of unemployed among ethnic minorities had increased in recent years, and now seemed to have stabilized at about 100,000. The proportion of unemployed was about 25 per cent for people from Suriname or the Netherlands Antilles, about 43 per cent for Turks and Moroccans, and about 13 per cent for the native Dutch population.

58. People from ethnic minorities were not only more likely to be unemployed, but also to remain unemployed for longer. The situation of women and young people from ethnic minorities was particularly bad. Mr. Wolfrum had asked about the situation of workers from the Mediterranean area; most of them had come to the Netherlands in the 1960s or early 1970s to take up unskilled industrial work. The same was true of other ethnic minorities, although to a lesser extent.

59. It could not be denied that the employment situation of ethnic minorities in the Netherlands was alarming and unacceptable. There were a number of reasons for that situation. The first was a demographic one; the size of the ethnic minority population was increasing more quickly than that of the native Dutch population - by about 10,000 per year at present. Also, the number of new immigrants allowed into the country had been about 60,000 a year in recent years, owing in part to the Government's liberal family-reunification policy.

60. Where education and vocational training was concerned, government policy was aimed at raising both the level of fluency in Dutch among the immigrants and their general educational standards. Many jobs of a low-skilled nature in industry, often held by people from the ethnic minorities, had disappeared in the course of restructuring and the economic recession of the 1970s and early 1980s. There was a trend away from employment in the manufacturing sector towards service industries, but employers were in a position to choose the best-educated applicants, a criterion which included fluency in Dutch among other skills. One adverse factor was the restricted access of immigrants to the labour market: the extent to which that was a function of direct discrimination by employers was ultimately for the courts and public administration to determine and was subject to penalties under the legislation in force.

61. It was difficult to assess the relative significance of the factors contributing to the worsening situation of ethnic minorities in the Dutch labour market, but government policy clearly could have little impact on demographic trends or on the process of economic restructuring, although measures could be taken in the educational field and in opening up the labour market by improving the access of ethnic minorities to job placement agencies. Among specific policies, mention should be made of the forthcoming reorganization and decentralization of the Public Employment Service, and the Government was currently considering the possibility of introducing

legislation on equality of opportunity that would oblige employers to take on a certain percentage of their work-force from the ethnic minorities. A reduction in the incidence of unemployment among the ethnic minorities was one of the priority goals of the Government's minorities policy, the long-term aim of which was to achieve equal participation at all levels of the work-force.

62. Mr. Yutzis (ibid., para. 30) had raised the question of work permits and residence permits. Immigrants were allowed to enter the Netherlands on the basis of family reunification, refugee status and on other grounds, and in such cases the granting of a residence permit was almost invariably followed by the issue of a work declaration, which entitled immigrants to look for whatever form of employment they wished. The difference between the work declaration and the work permit was explained in the Government's eighth and ninth periodic reports (CERD/C/158/Add.9 and CERD/C/184/Add.4 and 6). In practice a work permit was normally granted after one year of residence. In the case of diplomats and the staff of international organizations the requirements of the Foreign Workers' Employment Act were waived.

63. There were, of course, no precise figures available for the number of foreigners working illegally in the Netherlands, but the current estimate was between 50,000 and 100,000, representing less than 2 per cent of the total work-force. They belonged largely to the following three categories: those coming from countries from which emigration to the Netherlands was of long standing, such as Turkey, Morocco and Suriname; immigrants from Eastern Europe, especially Poland; and nationals of third-world countries, often those whose request for asylum had been refused. They found employment principally in agriculture on a seasonal basis, in the hotel industry, in the cleaning services industry and in textile manufacturing, and were concentrated in the capital and large towns. The authorities would take legal action against the employers of illegal workers, but the only penalty to which the workers themselves were liable was repatriation.

64. There was no specific legislative provision affirming the right to work as such, but the 1983 Constitution contained a chapter on basic rights of the individual which referred to the Government's responsibility to promote sufficient employment and should be regarded as providing a guideline for government policy rather than as conferring a statutory right to work. The Constitution also recognized the right of all Dutch persons to the free choice of employment, without prejudice to the restrictions laid down by or pursuant to an Act of Parliament.

65. In connection with codes of conduct relating to employment, he agreed with Mr. Banton (872nd meeting) that a single employment code might be preferable, and the Government was preparing new legislation with that aim in view. It would, however, prefer to rely on voluntary agreements entered into by employers' and workers' federations.

66. Referring in conclusion to the effects of psychological testing, he said that representatives of ethnic minorities had been consulted at the research stage in the preparation of such tests.

67. Mr. VOS (Netherlands) said that a number of speakers had asked about the housing situation of ethnic minorities in the Netherlands. In quantitative terms, it could be said that immigrants faced no major problems, but the quality of housing sometimes left much to be desired, and problems arose in connection with the large-scale urban renewal programmes launched in the 1980s, in addition to the problem of the relation between rents and income-distribution. In effect, many households with high incomes were living in relatively low-cost housing, whereas the less well-off were often paying comparatively high rents. That imbalance inevitably affected the ethnic minorities. Recent surveys carried out by independent researchers had revealed that the housing of at least 50 per cent of the ethnic minorities was of an equal standard to that of the population of Dutch origin. However, the housing of Turks and Moroccans was not yet of the same standard as that of the Surinamese and Antillean population, as the authorities had recognized in several recent policy documents. Generally speaking, discrepancies resulted from a variety of factors, such as educational background, the date of arrival in the Netherlands, the concentration of ethnic communities in large cities where housing was in greater demand, and income level. As far as discrimination was concerned, the number of cases of irregularities involving the allocation of housing by local authorities and housing corporations brought to the attention of the Ministry of Housing did not exceed one per year, so that responsibility for such discrimination as existed clearly lay elsewhere. However, the Ministry had recently commissioned an independent nation-wide survey of housing discrimination; its findings would be available by mid-1991 and would be taken into account in determining whether any change of policy was necessary.

68. Mr. YUTZIS asked, in connection with the "white/black schools problem" referred to in paragraph 21 of the ninth periodic report (CERD/C/184/Add.4), whether the concentration of efforts on improving the standard of education of black children might not have the effect, paradoxically, of hindering the process of their integration in Netherlands society, thus reinforcing their ethnic-minority status. In the case of handicapped children, for example, it had been found that they made greater progress if they were integrated in regular schools instead of being isolated in special educational institutions.

69. Mr. van der VALK (Netherlands) said that he agreed with the previous speaker that the allocation of resources on a large scale to "black" schools did not solve the problem of integration, and that government policy was to encourage school boards to cooperate with the bodies responsible for the urban renewal programmes in a broad endeavour to promote integration at the local level. In the case of the handicapped, experiments were being undertaken to integrate such children in regular education.

70. The CHAIRMAN thanked the Netherlands representatives for their contribution to the consideration of their country's report. The extent of the Government's commitment to enhancing the implementation of the Convention was shown by the large number of representatives participating in the

discussion. He said that the Committee had concluded its consideration of the eighth and ninth periodic reports (CERD/C/158/Add.9 and CERD/C/184/Add.4 and 6) of the Netherlands.

Mr. van Wulfften Palthe, Ms. Teekamp, Ms. de Bode, Ms. Haimé, Ms. Abels, Mr. van der Valk, Mr. Stroband and Mr. Vos (Netherlands) withdrew.

The meeting rose at 6 p.m.

Notes

1/ See International Legal Materials, vol. XXIX, No. 5, September 1990.

2/ CERD/C/131/Add.7 and 10; for the discussion of the report, see CERD/C/SR.766, 767 and 769.

3/ See A/45/74-S/21068, annex.

874th meeting

Tuesday, 14 August 1990
at 10.10 a.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Fifth, sixth and seventh periodic reports of Qatar (CERD/C/129/Add.3, CERD/C/156/Add.2 and CERD/C/182/Add.1)

At the invitation of the Chairman, Mr. Al-Kuwari (Qatar) took a place at the Committee table.

1. Mr. AL-KUWARI (Qatar) congratulated Mr. Shahi on his election as Chairman of the Committee and apologized for the delay in submitting the fifth, sixth and seventh reports of his Government. He quoted extensively from the periodic reports submitted by his country. Those reports proved that the State of Qatar and His Highness the Emir, who personally requested that acts of discrimination be punished, ensured for all inhabitants of the country without exception equal enjoyment of all human rights and all fundamental freedoms without discrimination or distinction on grounds of colour, sex, race, birth, ethnic origin, religion, language, belief, creed, conviction, sect or any other consideration. In that connection, the State of Qatar had taken no measure - legislative, administrative, judicial or other - to give effect to the provisions of articles 2-7 of the International Convention on the Elimination of All Forms of Racial Discrimination because, first, racist offences or acts of the kind referred to in the Convention were unknown in Qatari society, and secondly, the provisions of the amended provisional Constitution of the State of Qatar, the provisions of Islamic Shari'a and the Qatar Penal Code, together with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid, to which the State of Qatar had acceded and which had thereby been incorporated into its internal law, were considered sufficient to prevent and punish any acts of discrimination that might occur. The State of Qatar, however, again declared its willingness to envisage enacting national legislation based on model laws that might be drafted by the Committee, which would enable that legislation to be standardized and would facilitate agreements between States parties to the Convention with a view to the extradition of any persons charged with those offences or crimes.

2. In connection with one of the Committee's questions to which a reply was given in the third part of the sixth periodic report (CERD/C/156/Add.2, paras. 33-54), he said that, according to the 1988 census, the population of Qatar was 396,097 63 per cent of which was male. In answer to another question, he said that unemployment was almost non-existent in Qatar.

3. Mr. RHENAN SEGURA, speaking as rapporteur appointed for the preliminary examination of the reports of Qatar, expressed surprise at the assertion in paragraph 3 of the sixth periodic report (CERD/C/156/Add.2), on the subject of

racial discrimination, that "such offences are totally non-existent in Qatari society", because obviously there was no such thing as an ideal society. The Government of Qatar had submitted a report which was the antithesis of what a report of that type should be because, on each article of the Convention, it simply said that it had taken no legislative or other measure to give effect to the provisions of that article, claiming that racist offences and acts referred to in the Convention were unknown in Qatari society.

4. In paragraph 7 of the seventh periodic report (CERD/C/182/Add.1), it was mentioned that the State of Qatar had acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and to the International Convention on the Suppression and Punishment of the Crime of Apartheid, and that following those accessions those instruments had acquired the binding force of domestic law and were required to be applied by the courts. However, that same paragraph went on to say: "since these two Conventions do not lay down any criminal penalties for the offences which they cover, the secular courts are unable to impose penalties on the perpetrators unless such penalties are explicitly provided for in special domestic legislation". How could a person who had been the victim of an act of discrimination take legal action if such an act was not characterized as an offence?

5. Furthermore, if no act of discrimination was committed, why did His Highness the Emir consider it necessary to condemn such acts personally (ibid., para. 18)? In fact, it was clear from reading the reports of Qatar that discrimination really did exist there, because only nationals of Muslim origin - except for women, who were subjected to deep-rooted discrimination - enjoyed all rights, and that the other inhabitants of the country, i.e. 40 per cent of the population, were subjected to discrimination on the grounds of their race, sex, religion and social status, so that all the articles of the Convention were being violated. In that connection, the Committee would like to know the results of the census of immigrant workers which Qatar had conducted in 1986 and to be informed of the rights of those workers, if in fact they had any. Qatar had already been asked to provide that information but had not done so.

6. Did the fact that Qatar was violating the provisions of the Convention and did not condemn discrimination mean that the country had not fully understood the meaning of the international instruments and that discrimination was an integral part of its national identity? He would also like to know whether, in Qatar, Koranic law took precedence over all other law. Did the Qatari Government intend to enact any laws explicitly condemning discrimination, as the Committee had already asked it to do when it had considered the third periodic report? 1/

7. Concerning immigrant workers, while the national authorities obviously did not incite acts of discrimination against them, the fact remained that the Government's refusal to enact legislation on the subject meant that discrimination was common practice. Consequently, 30-40 per cent of the population did not enjoy any of the political and social rights enunciated in article 5 of the Convention.

8. For example, according to the report of the Commission of Experts appointed to monitor implementation of ILO conventions and recommendations, trade unions were banned in Qatar, although the country had been a member of ILO since 1972. Moreover, Qatar had not ratified any ILO conventions on Freedom of Association and Protection of the Right to Organise, Convention No. 87 (1948), the Right to Organise and Collective Bargaining, Convention No. 98 (1949), and Discrimination (Employment and Occupation), Convention No. 111 (1958). Did the Government of Qatar intend to ratify any of those conventions? Again, the ILO report showed that foreigners were seriously discriminated against in the matter of remuneration. On top of that, they had to work more than 48 hours a week, as compared with Qatari nationals, who worked 36 hours. Women employed in households had to work 7 days a week, 12 hours a day, all the year round. What did the Government of Qatar intend to do in order to rectify situations of that kind?

9. He would also like to know whether immigrant workers enjoyed the same facilities as national workers in such areas as health and education. He gathered that immigrant workers had not always been allowed to have their children with them in Qatar. When they were granted such authorization, however, what kind of education did those children receive and were they accorded the same treatment as Qatari children?

10. If Qatari legislation did not make provision for a guaranteed minimum wage, might that situation not lead to discrimination between foreign and national workers? And what was meant by the phrase "wages ... that cover the high cost of living in the country" (CERD/C/156/Add.2, para. 41)?

11. In previous reports, the Government of Qatar had repeatedly stressed that the distinction it made between nationals and foreigners was "legitimate" and did not entail discrimination. The Committee had already on other occasions pointed out that despite article 1, paragraph 2, of the Convention, an absolute distinction between citizens and non-citizens was impossible. That was particularly true if, as in Qatar, the foreign population represented a sizeable proportion of the total population and if, furthermore, it was composed of families who had been resident in the country for several generations.

12. However, not everything was negative in the reports submitted by the Government of Qatar, which had said it was willing (ibid., para. 32) "to consider promulgating internal legislation in the light of model legislation that could be formulated by the Committee". In that connection, it would be helpful if the Government of Qatar referred not only to the Convention, but also to other international instruments. Had the Government taken any steps in that direction?

13. Regarding article 6 of the Convention, he asked whether a non-Arab counsel could speak in Arabic before a court in Qatar.

14. As to article 7, he asked whether the campaign against discrimination was included in the school curriculum, for example in the philosophy or history of religions classes, or whether, on the contrary, any non-Koranic teaching was forbidden. Lastly, he reminded the representative of Qatar that, under

article 9 of the Convention, his Government was required to submit to the Committee the legislative, judicial, administrative and other measures it had adopted to give effect to the provisions of the Convention. Qatar had never provided that information and it would be helpful if it could be included in the next periodic report.

15. Mr. WOLFRUM thanked the representative of Qatar for having provided the Committee with the demographic data requested.

16. Paragraph 9 of the sixth periodic report (CERD/C/156/Add.2) said that the State of Qatar had not taken any legislative, administrative, judicial or other measures to apply any of the provisions of article 2 of the Convention or to guarantee compliance therewith "in view of the fact that Qatari society is basically free from all the racial offences and acts referred to in the paragraphs of this article". Paragraph 5 of the same report, however, said that the Convention had acquired the binding force of domestic law in the country and must be applied by the courts. Were those two statements not contradictory? Furthermore, it seemed doubtful whether the Convention was sufficiently detailed to be able to be applied as such by a judge. It would be interesting to know whether the courts, in cases of violation of the Convention, had imposed any of the penalties listed in paragraph 8 of the seventh periodic report (CERD/C/182/Add.1) ("verbal reprimand, flogging, imprisonment and even execution"). He pointed out, as other members of the Committee had already done, that under article 2 of the Convention every State party was bound to take legislative measures to prohibit racial discrimination.

17. It was apparent from paragraph 15 (c) of the sixth periodic report that naturalized citizens of Qatar could not hold public office or exercise the right to work until 5 years after their naturalization; and they could not vote or stand as candidates in an election until 10 years after naturalization. It, therefore, seemed that there were two classes of citizens: those who had recently been naturalized and others. That type of distinction was forbidden by the Convention, and it would seem that in Qatar discrimination existed in that respect. It was stated in paragraph 15 (g) that all inhabitants of Qatar, regardless of sex, nationality or religion, had the right of access to all places or services intended for use by the public "within the limits of Islamic customs and traditions". It would be helpful if the representative of Qatar could explain that point in greater detail. According to paragraph 15 (j), a foreign worker was not entitled to change his job or to transfer from one employer to another without the approval of the original employer and the Ministry of the Interior. What was the purpose of that rule? Did it not infringe the right to free choice of employment? The fact that foreigners could most often do only menial manual work and the requirement that they should have a Qatari sponsor (CERD/C/156/Add.2, para. 16) also seemed to be incompatible with the provisions of article 5 of the Convention.

18. Mrs. SADIQ ALI, noting that foreign workers were recruited under labour agreements concluded with their countries of origin (CERD/C/156/Add.2, para. 36), asked what was the situation regarding Palestinian workers. Were they considered to be citizens of Qatar? It was alleged that some Indian and Bangladeshi women, in their countries of origin, married Qataris who brought

them to Qatar, where they treated them not as wives but as servants. What remedies were available to those women? Lastly, she referred to camel races, which were very popular in Qatar and in which the animals were ridden by boys aged five or six who were strapped on. Was there no way of banning that cruel sport?

19. Mr. de GOUTTES endorsed the frank and clear criticism levelled by other members of the Committee against the fifth, sixth and seventh periodic reports (CERD/C/156/Add.2 and CERD/C/182/Add.1) of Qatar, which raised many questions. It would seem that the penalties listed in paragraph 5 of the sixth periodic report, namely, verbal reprimand, flogging, imprisonment and execution, could be imposed if the Convention was violated. Were flogging and execution truly in keeping with the intentions of the Convention? According to paragraph 22 of the same report, there were no trade unions in Qatar, but "their functions were adequately discharged" by the consultative committees for the promotion of cooperation between employers and employees and by the committees for the settlement of disputes arising between the parties. What was the membership of those committees? Were workers automatically represented on them, even if they were foreigners? Was any change in the present state of affairs envisaged, for example through the establishment of genuine trade unions?

20. The CHAIRMAN, speaking in a personal capacity, said be wished to refer, like other speakers, to the question of the penalties listed in paragraph 5 of the sixth periodic report (CERD/C/156/Add.2), in particular, flogging and execution. Had there been cases where those penalties had been imposed? Could they really be left to the "discretion of the magistrate", and was any legislation planned in that area? In any case, whipping and execution should be excluded. In so saying, he was mindful of the fact that by giving work to hundreds of thousands of foreigners, Qatar had saved many nationals of third-world countries from poverty.

21. Mr. GARVALOV said that he supported Mr. Rhenan Segura's analysis of the fifth, sixth and seventh periodic reports CERD/C/156/Add.2 and CERD/C/182/Add.1) submitted by Qatar and repeated that he was not at all convinced by the argument used by many countries, including Qatar, of invoking the national Constitution to conclude that there was no racial discrimination. Furthermore, how could the fact that a country had a 100 per cent Muslim population constitute a guarantee against any form of discrimination, and why, for example, could a country that was 100 per cent Christian not make a similar claim? The "lofty principles and ideals" referred to in paragraph 9 (c) of the sixth periodic report (CERD/C/156/Add.2) were upheld not only by the Islamic religion but by all of human civilization; otherwise, for what reason would persons professing other faiths accept them? If no manifestation of racial discrimination had been noted in Qatar, could it be because the Convention and its objectives were widely disseminated throughout the country? As to article 7 of the Convention, one noted that no reference was made in the periodic reports to the inclusion of the international human rights instruments in Qatari school curricula. Was the Convention, for example, studied in Qatari schools?

22. Mr. AL-KUWARI (Qatar) said that he did not have precise enough information to reply to all the Committee's questions; at the present meeting he would simply say a few words on Qatar's general point of view. Severe criticism had been levelled at Qatar and its periodic reports. In fact, some of the criticism had been extreme, and he would like to know where Mr. Rhenan Segura, for example, had obtained some of his information. Was he certain that it was accurate? Could one judge a State on the basis of rumours while hinting that the authorities were not telling the whole truth? In any event, the fact was that on its territory the Government of Qatar had not observed any violation of the Convention necessitating special legislation. Why was it maintained that the Shari'a ran counter to the international instruments to which Qatar was a party? It was well known that the Shari'a, which was in force in all Islamic countries, was extremely comprehensive and covered any violation of human rights. Seen against that background, the Muslim countries could even be said to be in an advantageous position. Any country was entitled to refer to a religion and the State was entitled to pass legislation based on that religion. The reports of States parties should be studied in a spirit of integrity, with due consideration for the actual situation.

23. Mr. RHENAN SEGURA pointed out that he had not said the periodic reports submitted by Qatar had been fallacious. It had been his intention not to attack Qatar, but to make a scientific analysis of the documents submitted. He was in fact grateful to Qatar for having agreed to engage in a dialogue with the Committee.

24. The CHAIRMAN considered that the Committee had studied the reports submitted by Qatar in good faith and reminded the representative of that country that the advisory services of the Centre for Human Rights were entirely at the disposal of his Government to dispel any doubts it might have about the proper interpretation of the Convention. He thanked the Qatari delegation for its cooperation and announced that the Committee had thus completed its consideration of the fifth, sixth and seventh periodic reports of Qatar (CERD/C/129/Add.3, CERD/C/156/Add.2 and CERD/C/182/Add.1).

Mr. Al-Kuwari (Qatar) withdrew.

Mr. Ferrero Costa (Vice-Chairman) took the Chair.

Ninth and tenth periodic reports of Yugoslavia (CERD/C/172/Add.9)

At the invitation of the Chairman, Mr. Mitić, Mr. Kosin, Mr. Horvatic and Mrs. Radic (Yugoslavia) took seats at the Committee table.

25. Mr. MITIC (Yugoslavia) said that the reports currently under consideration had been overtaken by major constitutional and legislative changes in Yugoslavia. Those changes would be explained in greater detail in the next report of Yugoslavia and could be summarized as: introduction of a market economy, with several forms of ownership, elimination of the one-party system and transition to a multi-party system (more than 100 parties had been formed in the Yugoslav Republics), democratization of the socio-political system through the introduction of the rule of law and better guarantees for the rights and freedoms of the individual, reassertion of the principle of

non-discrimination in respect of political opinions, and frequent use of the referendum as the most direct expression of the will of the people in matters of public concern.

26. The Yugoslav Parliament had adopted 24 amendments to the Federal Constitution and preparations were under way for a new constitution. In 1989, almost all the Yugoslav Republics had adopted amendments to their Constitutions and the adoption of new constitutions by the Republics was expected shortly. In the process of drafting the new national Constitution, the Yugoslav Parliament had been divided between supporters of a federation and supporters of a confederation. Many different views had been expressed on the meaning of autonomy and the nature of the instruments for protecting the identity and rights of minorities. The Presidency of the Federation had begun a dialogue with the leaders of all the federal entities with a view to reaching a solution that respected the right of all the Yugoslav nations to self-determination, including the right of secession, if that was the will of the people of any of the Republics, a will expressed in the referendum with a proviso that the obligations created at the time of secession, which are still to be determined, are respected. During the discussions with the Presidency of Yugoslavia, the leaders of all the Republics had expressed their willingness to remain a part of Yugoslavia, albeit within a framework that was still to be defined.

27. The law on the amendment of the Yugoslav Criminal Code, enacted in May 1990, had radically changed the definition of what had previously been termed political offences and Yugoslav legislation was currently on a par with European criminal law.

28. Since the submission of the report (CERD/C/172/Add.9) under consideration, the issue of human rights had received special attention in Yugoslavia and new mechanisms concerned with the observance of those rights had been established. Apart from various institutions in the Republics and provinces, the Yugoslav Human Rights Forum and the Standing Committee on Human Rights and Freedoms (subordinate to the Federal Chamber of the Yugoslav Assembly) had been established.

29. When the eighth periodic report 2/ of Yugoslavia had been considered, mention had been made of the situation in the Socialist Autonomous Province of Kosovo. Since that time, the situtation had further deteriorated and special measures had had to be adopted to restore security, peace, and law and order in the province. The underlying cause of those problems was the aspiration of a part of the national Albanian minority to make the province a republic and a sovereign State, and to declare what it considered the right of that minority to self-determination and secession. A declaration to that effect, originating from delegates of the Albanian minority and regarded by the Presidency of the Federation and the Yugoslav Parliament as a direct attack on the integrity and sovereignty of Serbia and Yugoslavia, had necessitated the temporary suspension of the Assembly and Executive Council of Kosovo.

30. The Socialist Federal Republic of Yugoslavia consisted of six Republics which, by virtue of the right to self-determination, had been created by the peoples of Yugoslavia - Croatians, Macedonians, Montenegrins, Muslims, Serbs and Slovenes. The Republics had transferred a part of their sovereignty to

the Federation. While there was no denying that the peoples of Yugoslavia were entitled to self-determination, including the right to secession, nowhere in the world did national minorities have that right. Minorities could not claim that right in order to create their own State or to join other States. The autonomous provinces in Yugoslavia were constituent parts of the Federation, as demonstrated by the fact that they were directly represented in the organs of the Federation. They were not States. Kosovo formed part of the Serbian State and Serbian territory, and had never in history belonged to Albania.

31. The Serbian people and the Government of the Republic of Serbia would not disown a part of their territory, and in this respect they enjoyed the full support of the Federation.

32. Concerned over protracted suppression on the part of the Albanian population, of other peoples, namely, the Serbs and the Montenegrins, who were forced to leave in order that the Kosovo could become an ethnically pure province, i.e. inhabited by the Albanian national minority, some of the newly formed political parties in Serbia in their programmes provided for a total abolition of the autonomous provinces in Serbia. Those programmes were not likely to win a majority in the forthcoming elections, since the new draft Constitution of Serbia, already approved by the Parliament, contained a provision for the existence of the two autonomous provinces in Serbia. However, the final outcome of those proposals depended on the will of the majority of the citizens to be expressed at the elections in Serbia.

33. In the elections to be held at the end of the year, all citizens, including those of Albanian nationality, would freely elect the candidates who would represent them in the highest forums of the country. The solution to the so-called Kosovo crisis would have to be sought through dialogue with the freely-elected representatives of the population. Furthermore, despite the assistance it received from Yugoslavia as a whole (about $1.5 million a day), Kosovo was the least developed region in the country; the economic measures he had recently outlined should enable it to develop.

34. During the review of the previous report, some members of the Committee had expressed interest in the situation of the Romanies in Yugoslavia. In 1989, a delegation of the Alliance of Romanies of Yugoslavia had visited the President of the Yugoslav Parliament and informed him of the need to improve their legal status, their living and working conditions, their opportunities in the area of education and their material security. To that end, a parliamentary commission had already studied the legal status of the Romanies and the new Constitution would take their request into account. In order to offset the effects of an unfavourable economic situation, the Yugoslav Government and Parliament had strengthened private initiative, especially in crafts and trade. Measures had also been taken to promote the gypsy culture and language, which at present were taught in only about 10 State schools. Fifty books in the Romany language had been published recently and the Bible was being translated into that language. Those results were, admittedly, only a modest response to the host of problems facing the Romanies, and the Alliance of Romanies of Yugoslavia, together with State

organs at various levels, were endeavouring gradually to improve the living conditions of that community. He remained at the disposal of members of the Committee for any further information.

35. The CHAIRMAN thanked Mr. Mitić for his presentation and for his clear account of recent developments in Yugoslavia.

36. Mrs. SADIQ ALI welcomed the changes that had occurred in Yugoslavia, in particular the announcement of a new Constitution and the dialogue which had been started between advocates of the federation and advocates of the confederation. None the less the country was still experiencing serious problems. The Yugoslav economy was in deep crisis and unemployment had reached record levels in the south. In the political sphere, after bitter disputes the communist monopoly had had to give way to pluralism, and many positive measures had been announced. However, the situation appeared to be still very confused in the provinces of Kosovo and Vojvodina. In June 1990, Serbia had announced its intention to strip the province of Kosovo of its autonomy, although 90 per cent of the population was Albanian. Serbia and Montenegro were trying to increase their control over the provinces of Kosovo and Vojvodina. She would like the representatives of Yugoslavia to explain to the Committee how the Government intended to ease the tension there. The Committee would also like to know what constitutional amendments had been adopted in the Kosovo Assembly by an overwhelming majority. In the elections, due to be held before the end of the year, the proposals to reduce Serbian domination were likely to receive a massive popular mandate. Such a development could lead to new tensions between Serbia and Kosovo. What way did the Federal Republic see out of that impasse? In October 1988, a crowd of 100,000 people had toppled the regional leaders of Vojvodina, an autonomous province. What had been the cause of that?

37. Referring to economic matters, she said the Committee had been informed that a special fund had been set up to assist underdeveloped regions such as Bosnia Herzegovina, Macedonia, Montenegro and Kosovo. What was the total amount of the fund and how was it distributed to each of the underdeveloped areas? While it was true that economic disparities could not be eliminated within a few decades, it would be surprising if the situation in those provinces had not shown any improvement. She therefore asked the representatives of Yugoslavia to make available to the Committee the exact figures for the economic assistance given and to state what measures had been taken in that area.

38. On another point, she would like to know why the Bible was currently being translated into the Romany language. With regard to the large numbers of persons who had been prosecuted for political offences over the years, she asked whether those persons had been tried in accordance with the Convention. The wording of paragraph 5 of the report (CERD/C/172/Add.9) read: "The acts prohibited under the Convention are considered to be crimes under Yugoslav criminal legislation, thus ensuring full protection as provided for under the International Convention on the Elimination of All Forms of Racial Discrimination". It was common knowledge that there had been interethnic strife in Yugoslavia. Why had the Committee not been informed of the specific measures that had been taken to punish acts of racial discrimination?

39. In 1988, the autonomous provinces of Kosovo and Vojvodina had demanded greater opportunities for education in their mother tongue. That was a legitimate demand under articles 2 (2) and 5 (e) (v) of the Convention, and she would like to know whether the Government had responded to it.

40. Returning to the problem of unemployment raised earlier, she asked the representatives of Yugoslavia whether unemployed persons were free to travel within the country and reside in an area which offered better job opportunities.

41. She would also welcome further information on the present situation regarding freedom of the press. She noted that up to the time of the report 80 per cent of Yugoslav journalists were members of the Communist Party. With respect to freedom of assembly and association, she observed that student demonstrations had resulted in very heavy prison sentences for some of the students. That would seem to be a violation of a right provided for in the Convention.

42. Concerning the operation of the courts, she acknowledged that Yugoslav courts had a measure of independence but asked the delegation of Yugoslavia whether any changes were envisaged to ensure that the judges were completely free of any subordination to the Government and Party officials. She thanked the representatives of Yugoslavia in advance for their replies to those questions.

43. Mr. WOLFRUM asked whether it was true that the Parliament of Serbia had recently attempted to restrict the autonomy of Kosovo. He would also like to know what percentage of Albanians in that region were attending school or university, had a job or were unemployed, in comparison with the Serbian population. He also inquired what was the proportion of teachers of Albanian origin in Kosovo and whether they enjoyed the same social benefits as their Serbian colleagues. And was it true that newspapers and radio broadcasts in Albanian were forbidden? It would seem that the birth control plan initiated by the Government tended to check much more sharply the increase in the Albanian population than the increase in the Serbian population. He would welcome clarification of that point.

44. Macedonia also had a large Albanian population and it would be useful to have comparative data on the situation regarding education and employment. In connection with the tension between Croatians and Serbians in the Republic of Croatia, he asked whether it was true that, only a short while before, relations between the two ethnic groups had been very good and that the deterioration of the situation was attributable to the influence of the Republic of Serbia. And had the Croatian Parliament, as reported, recently objected to the holding of a referendum on the creation of an autonomous Serbian region in Croatia?

45. Mr. SHERIFIS said he would like to know what arguments had been put forward, in the Yugoslav Parliament, by the supporters and opponents of a confederation. In relation to what had been said about the situation in Kosovo, he underlined that he would also like to refer to the situation there, but from a different angle than the one raised by previous speakers. It was as a result of intimidation and fear and because of their ethnic origin

cert in members there were forced to leave the territory. He emphasized that situation because it was exactly what concerned the Committee. Any attempt to alter the demographic composition of a country or region along ethnic lines was contrary to both the spirit and letter of the Convention. He repeated that he looked at the problem from a different angle and wanted to know what steps were being taken by both the central authorities and the Republic of Serbia to correct that situation.

46. Mr. SONG Shuhua, noting that some regions of Yugoslavia were less economically advanced than others, asked what the Government intended to do in order to mitigate the disparities. He hoped that the changes under way would not have any adverse effects on the minorities or on implementation of the Convention.

47. Mr. de GOUTTES said that he was very interested in what the representative of Yugoslavia had said about the reform of the Penal Code, and in particular the provisions relating to political offences. The 1989 report of Amnesty International stated that Albanians in Kosovo suspected of political offences had been prevented from contacting their lawyers during the inquiries conducted by State security officers and that that lack of legal safeguards had encouraged the violation of certain fundamental rights of the accused. He would welcome further information on that point. It would also be helpful to know whether the duties of the "Social Attorney of Self-Management" (CERD/C/172/Add.9, para. 13) had changed and whether that official could institute proceedings in cases of racial discrimination.

48. Mr. BANTON said that he supported Mr. Sherifis' approach with regard to Kosovo. He recalled the part of the introductory statement by Mr. Mitić relating to the forced departure from Kosovo by the Serbs and Montenegrins as a consequence of persecution and added that at times that persecution had been vicious. Respect for constitutional guarantees depended entirely on the ability of the State to enforce the law; in the present case, the State of Yugoslavia had been impeded in taking action and had consequently been unable to ensure the necessary protection to those groups. The ability to enforce the law was important to both the members of the minorities and the majority. The situation being discussed was one in which the legitimacy of the State was in question and it was confronted by a territorial challenge. It was to be hoped that the forthcoming elections in Serbia would provide a way out of the impasse, and that a fruitful dialogue would begin with the representatives appointed by the people. He assured the representatives of the reporting State that there would be understanding in the Committee of the problems described and expressed appreciation of the way they were described in the introductory statement.

49. Mr. AHMADU drew, in relation to political moves in Yuguslavia and the mention of a federation or confederation, a parallel with Nigeria's experience. As regards minorities, he stated that they complained because they did not think that constitutional guarantees depended only on how they were applied. He congratulated Yugoslavia on its firm opposition to apartheid and asked whether, out of the 100 or so political parties that had been formed since the abolition of the one-party system, some were ethnic or religious in character. Were there any rules governing the formation of political parties?

50. Mr. CARVALOV fully endorsed the Yugoslav representative's observations on the right to self-determination. In no country could national minorities invoke that right to justify the creation of a separate State or to join another, at the risk of fragmenting the nation. He knew there were other countries not only in Europe, but also in other parts of the world that did consider to be a very serious matter even a theoretical possibility of secessionist tendencies and tendencies which might lead to a disintegration of a given country. He asked for further information on the implementation of articles 4, 5 and 6 of the Convention and on cases of racial discrimination that had been brought before the courts. He hoped that the decision to suspend the Assembly and Executive Council of Kosovo was purely temporary.

51. He also asked whether any political parties had been formed on ethnic criteria in Yugoslavia and, if so, whether the law provided any guarantees to prevent separatist movements or tendencies. And he would like to know whether all Yugoslav citizens were equal before the law with respect to land purchase, particularly in Kosovo and Vojvodina.

52. According to the eighth periodic report of Yugoslavia, there were in the country some 36,000 people of Bulgarian origin, including 30,000 in Serbia. It would seem that that minority was discriminated against and was in a precarious economic situation. He was also surprised that there were now only 2,000 Bulgarians in Macedonia, compared with 1.5 million at the beginning of the century. Concerning the crisis in Kosovo, he considered the Yugoslav Government's attitude to be exemplary.

53. The CHAIRMAN announced that the debate on the reports of Yugoslavia would continue at the next meeting.

The meeting rose at 1.15 p.m.

Notes

1/ CERD/C/73/Add.1; for the discussion of the report, see CERD/C/SR.557.

2/ CERD/C/118/Add.23; for the discussion of the report, see CERD/C/SR.737-738.

875th meeting

Tuesday 14 August 1990
at 3.05 p.m.

Chairman: Mr. SHAHI

In the absence of the Chairman, Mr. Ferrero Costa, Vice-Chairman, took the Chair.

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth and tenth periodic reports of Yugoslavia (CERD/C/172/Add.9) (concluded)

At the invitation of the Chairman, Mr. Horvatić and Mr. Mitić (Yugoslavia) took a place at the Committee's table.

1. Mr. HORVATIĆ (Yugoslavia), replying to questions raised by members of the Committee, said that he would confine his replies to some aspects of the criminal justice system in Yugoslavia, with specific reference to the rights of minorities.

2. Criminal law in Yugoslavia had changed radically since 1945, and was currently undergoing far-reaching reform. In 1951 the Criminal Code embraced the country as a whole, but in 1977, pursuant to the constitutional changes of 1974, the system was amended, so that nine criminal codes were concurrently in force in Yugoslavia, namely the Criminal Code of the Federal Republic and the Criminal Codes of six Republics and two Autonomous Provinces. The resulting multiplicity of spheres of competence could, of course, lead to problems.

3. Mrs. Sadiq Ali had referred to article 133 of the Federal Criminal Code, which covered a wide range of offences of a political nature. He was happy to report that, as of 5 August 1990, that article had been rescinded, in addition to many other articles which dealt with counter-revolutionary activity and other political offences.

4. A further important development was the amnesty granted at the Federal level to 299 persons accused of or sentenced for political crimes. Some 300 had been amnestied in Croatia in July 1990, and many further amnesties at the Federal level were expected within the next few days.

5. The independence of the judiciary was a contentious issue in Yugoslavia, in that judges often imposed sentences whose leniency was at variance with political pressures and the expectations of the authorities. Similarly, within the criminal justice system itself, problems sometimes arose because the relationship between the judiciary at the Federal and Republic levels was not always in conformity with the Constitution. However, the situation in that regard was changing rapidly.

6. Another article of the Federal Criminal Code to which reference had been made, namely article 134, which dealt with incitement to national, racial or religious intolerance or discord, had recently been substantially amended in the interests of making it less repressive. In the period 1982-1988 approximately 60 persons had been sentenced under article 134 each year.

7. Mrs. Sadiq Ali had raised the issue of the self-management system, which was mentioned in paragraphs 13 and 14 of the consolidated ninth and tenth periodic reports. The authorities responsible for administering the system had been a target of criticism in Yugoslavia, and it had been decided that in future the protection of workers' rights would be the province of the regular courts, operating in accordance with the normal civil procedure.

8. Mr. MITIĆ (Yugoslavia) said he regretted the lack of detail in his country's ninth and tenth periodic reports, but hoped that the important questions raised by members of the Committee would be addressed more fully in the next report. He thought, however, that some of the sources on which Mrs. Sadiq Ali and other speakers had drawn in making their comments had provided a less than balanced picture of the situation in his country, which was complicated by the fact that the Governments of the six Republics which made up the Socialist Federal Republic of Yugoslavia often held divergent views on important matters, including that of the country's future structure.

9. Mrs. Sadiq Ali had asked what steps the Government had taken to counter centrifugal nationalist tendencies, particularly in Serbia. The Federal Government was concerned to protect the rights of all nationalities and ethnic groups, and it recognized the need, with such a diverse population, to guarantee full equality of rights both for individual citizens and specific minorities. It also acknowledged the dangers posed by the rise of nationalist parties. The requirement of registration was intended to curb that phenomenon, but the need to uphold the right of freedom of association made it difficult for the courts to reject applications for registration, and in fact only one party's application had so far been provisionally refused. It was essential to ensure that the registration procedure was not abused.

10. Mention had been made of the situation in the Autonomous Province of Kosovo, where violent demonstrations in favour of the formation of an independent State had taken place. Naturally, neither the Federal Government nor the Serbian authorities welcomed the formation of political groups and parties whose objective was to promote the interests of a particular national community exclusively, and a party had recently been established by the Federal Prime Minister and some members of the Federal Government with the aim of opposing such particularist tendencies and of safeguarding the country's unity as a State. The trend towards the formation of nationalist parties was, however, growing.

11. On the question of economic support for underdeveloped regions, assistance to Bosnia and Herzegovina, Macedonia, Montenegro and the Autonomous Province of Kosovo, which were all classified as underdeveloped, took two forms. Firstly, there was a fund to which all economic enterprises were

obliged to contribute 1.67 per cent of their income, in addition to a fund at the Federal level: Kosovo received 50 per cent of the allocations from those funds. Secondly, direct subsidies were given to support regional budgets: in the case of Kosovo, 90 per cent of the budget of the Autonomous Province was covered by the subsidy. It should be added that most of the credits from international funds had been channelled into the development of the underdeveloped regions.

12. Mrs. Sadiq Ali had also referred to reports that Albanians were being subjected to harassment and persecution in the courts. Granted that judicial procedures were open to abuse in all legal systems, the main task of the authorities at Federal and Republic level was to ensure that such abuses did not recur and to remedy any mistakes that had been made. It was obviously not in the interests of the Government to ignore the disaffection of any of the country's ethnic minorities, which could lead to a deteriorating political situation. Street demonstrations in Kosovo, however, had been prohibited in order to safeguard law and order. Apart from that prohibition, there were no restrictions on freedom of movement in the Autonomous Province or in other parts of the Federal Republic.

13. Mrs. Sadiq Ali had mentioned the allegation that building regulations in Macedonia had been manipulated in order to justify the bulldozing of the walls that traditionally surrounded Albanian homes in the Republic. In fact only one regulation had been at issue, and its intention was not to discriminate against the Albanian population, but the controversy had been grossly exaggerated in newspaper reports. His Government would, however, willingly provide further details if required.

14. He agreed with Mrs. Sadiq Ali about the positive aspects of the self-management system, even though it had been vitiated by corruption and certain features of party monopoly. As a socio-political system, it would be retained and, indeed, embodied in the Constitution, but in an amended form consistent with the needs of a modern economy and Yugoslavia's transition to an open market economic system. Workers' councils still decided the main issues of labour policy in State enterprises, but managers and management boards were being given greater responsibility for decision-making. In private and mixed enterprises, where the self-management system as originally devised could no longer be applied, a system of participation incorporating some features of self-management was being introduced.

15. A reply to Mrs. Sadiq Ali's question about the case of the youth magazine Maladina would be given in the next report. It was no longer true to say that the vast majority of Yugoslav journalists were Communist Party members. The press was free and independent of government and party influence, as could readily be ascertained by a reading of the Yugoslav press today. Many new newspapers had come into being, and existing newspapers, including so-called "party" publications, had changed course. Press diversity was reflected in the large number of newspapers advocating the policies of regional groups - the sometimes regrettable price to be paid for freedom of the press. Each Republic had its own information media, while the Federal Government had its

own share of television broadcasts, and one newspaper. Regarding the banning of an Albanian-language newspaper, it should be pointed out that it had been a State-funded newspaper, and it was understandable that the State should be unwilling to continue to finance a newspaper opposed to government policy. To his knowledge, there were 14 newspapers in the Albanian language.

16. The question about the political suitability test to which judges had been subjected was covered by the draft amendments to the Constitution referred to by Mr. Horvatić. Judges had previously been subject to election and re-election; by abolishing that requirement, the independence of the judiciary would be more adequately guaranteed.

17. In reply to Mr. Wolfrum's question about the suspension of the Assembly of Kosovo, that suspension was a temporary measure, though neither a popular nor a satisfactory one. The declaration by the Albanian deputies, numbering 110 out of a total of 138, proclaiming the independence of the Province and the creation of a sovereign State was not juridically speaking a decision by the provincial parliament as a whole, and was considered by the Presidency of the Socialist Federal Republic of Yugoslavia and the Yugoslav Parliament to be an illegal act and an attack on the territorial integrity of the State. He hoped that the situation would be resolved very soon, possibly on the outcome of the parliamentary elections scheduled to take place in Serbia and Kosovo in September 1990.

18. Regarding the percentage of students of Albanian origin in schools in Kosovo, he said that 80 per cent of the population of Kosovo was of Albanian origin, and the proportion of students of Albanian origin was even higher, especially in secondary and higher education. There were 1,205 elementary schools, with 13,147 classes, 385,718 pupils and 19,525 teachers and 165 secondary schools, with 2,437 classes, 75,403 pupils and 3,699 teachers. The total university population of more than 40,000 students reflected the demographic composition of the population as a whole. Although there had been recent measures to cater more adequately for students of non-Albanian origin, they had not altered the relative educational provision for pupils of Albanian and non-Albanian origin. More detailed statistics would be provided in the next periodic report. He assured Mr. Wolfrum that no special advantages were accorded to non-Albanian teachers. No distinction was made, in terms of administration, remuneration and working or other conditions, between teachers of Albanian and non-Albanian origin. Figures for the percentage of teachers in those two categories in relation to the composition of the population were not immediately available and would be provided later. Since at least 80 per cent of pupils were taught in the Albanian language, the proportion of Albanian-speaking staff must inevitably be far higher than that of teachers speaking other languages.

19. He welcomed the question about the family planning system and possible birth-rate restrictions, since public discussion about family planning had met with some resistance until recently. Discussions were now being held on the subject and initial steps had been taken to implement a family planning policy, but he could assure the Committee that the Government had no intention

of restricting the birth rate and, in particular, of applying any such measure against any particular group or minority. Any official birth-rate restriction would be politically injudicious and the problem of a high birth rate should be solved not by administrative measures but through economic development and an improvement in living standards.

20. In response to the question about the Albanian minority in Macedonia, he said that no autonomous province had been established in Macedonia for historical reasons and also because the number of members of the Albanian minority did not warrant such a step. There were also substantial numbers of Albanians in Montenegro and in the part of Serbia which had no autonomous provinces. The dissatisfaction of Albanians living in the Socialist Autonomous Province of Kosovo was a matter of some interest, since they occupied over 80 per cent of all posts and positions of authority in the Province and were also adequately represented in both the provincial parliament and in the Yugoslav Parliament.

21. The question of the refusal by the Croatian parliament to authorize a referendum on autonomy had been raised. That should be seen in the context of discussions about the protection of minorities of all kinds, including not just national minorities, but also groups living outside their own Federal units. In response to the claims of the Serbian population in Croatia for a form of cultural autonomy, the Croatian authorities had taken the view that there was no legal basis for a referendum on autonomy for the Serbs.

22. He fully appreciated and shared the concern expressed by Mr. Sherifis and other members about the need to clarify the rights of national minorities, especially the question as to which of those minorities had the right to secession and self-determination. As far as he knew, there were no examples anywhere in the world of minorities enjoying such a right, nor any relevant provisions in international law. His Government's position was clear: it opposed any attempt to restrict or abolish the rights of national minorities, was convinced of the need to protect minorities, whatever their origin, and had consistently sought to improve their status. It was not prepared, however, to tolerate abuses of such protection. He was aware that the Committee and other similar bodies had frequently discussed the crucial question of the protection of the rights of minorities in terms of the number of members of those groups, concluding that rights existed regardless of size. The rights of numerically larger minorities did not necessarily take precedence over those of smaller groups. In Yugoslavia, the position of all national minorities, including Albanians living outside the Autonomous Provinces, Bulgarians, Hungarians, Italians, Romanians and others, must be considered and compared. Those groups, too, enjoyed certain rights at the municipal and Republic level, but did not have the right to autonomy.

23. On the question of education and schools in Macedonia, various options in terms of bilingual education or mother tongue education had been considered and implemented. The attempt in some Macedonian cities to introduce bilingual education did not constitute discrimination against a minority, since such education had been very successfully introduced in Slovenia and other parts of

the country. It was a matter for discussion and consultation among the groups concerned. Incidents might, of course, occur, and he would be glad to provide the Committee with court decisions on that subject.

24. On the question whether Yugoslavia should be a federation or confederation, he said that some Republics, in particular, Slovenia and Croatia, would prefer the latter. They were in favour of a confederation consisting of sovereign republics with competence in such areas as foreign affairs and defence. Other Republics had expressed opposition to a confederation. The question would have to be resolved before the end of the current year. The Presidents of all the Republics were engaged in discussions and would have to reach a solution by that time. If they were unable to do so, a referendum would be held in all the Republics.

25. With regard to the question raised by Mr. Sherifis concerning the regrettable events in Kosovo Province, while the Serbs constituted a majority in Serbia, they were a minority in the Province. They had been forced to leave partly as a result of intolerence by Albanian authorities but also because of the misguided attitude and policy of certain Serbian and Yugoslav politicians. The Albanians were not entirely to be blamed for the situation.

26. The CHAIRMAN thanked the Yugoslav delegation for its interesting and constructive dialogue with the Committee, and said that the Committee had concluded its consideration of the ninth and tenth periodic reports (CERD/C/172/Add.9) of Yugoslavia.

Mr. Horvatić and Mr. Mitić (Yugoslavia) withdrew.

The meeting was suspended at 4.35 p.m. and resumed at 4.45 p.m.

Mr. Shahi took the Chair.

Tenth periodic report of the Holy See (CERD/C/172/Add.8)

At the invitation of the Chairman, Monsignor Causero (Holy See) took a place at the Committee table.

27. Monsignor CAUSERO (Holy See) said that in its report the Holy See drew the Committee's attention to its essentially religious and moral character, and to its minimal territorial area, which served as the basis for safeguarding its own autonomy and for the free exercise of the pastoral mission of the Supreme Pontiff. That was why its tenth periodic report (CERD/C/172/Add.8) was not in the form requested by the Committee's guidelines.

28. Referring to the fundamental texts of the Roman Catholic Church mentioned in the report, he said that the new Code of Canon Law, the principal legislative document of the Church, confirmed its doctrine which rejected as alien to the spirit of Christ any discrimination against human beings because of their race, colour, way of life, or religion.

29. Recent years had been characterized by the frequency with which the Pope and other authorities of the Catholic Church had dealt with the problem of discrimination in all its forms, action which might be regarded as a mobilization of the Christian and human conscience against a resurgence of prejudices and discriminatory attitudes. The main features of that mobilization were mentioned in the report and its appendix.

30. Among other documents worthy of attention, mention should be made of the Message of His Holiness Pope John Paul II for the World Day of Peace for 1989, the speech made to the Diplomatic Corps accredited to the Government of Zambia on 3 May 1989; and the pastoral letter of the Australian Episcopal Conference, dated 11 December 1988, on racism and the Church's attitude towards it. Lastly, a document which deserved the Committee's attention for its systematic and official nature was The Church and racism - action for a more fraternal society. That document, which constituted a summing up of the Church's doctrine against discrimination and in defence of a unitary vision of the human family, was intended to enlighten and stir the conscience of people in the interests of a more fraternal society.

31. First, the document took up the phenomenon of institutionalized racism, as practised by the apartheid regime. Secondly, there were other forms of discrimination, such as those of a political, economic, cultural and religious nature, which took on the features of racism or created situations favourable to its appearance. The document denounced racial discrimination against aboriginal populations, which were often marginalized in relation to their country's development; discrimination against minorities, in general, and religious minorities, in particular; spontaneous racism against foreigners (immigrants or refugees), particularly those distinguished by their ethnic origin or religion; and anti-Semitism, which had been one of the most tragic forms of the racist ideology practised in modern times and which had not yet disappeared.

32. Thirdly, the document set out the Christian vision of the equal dignity and brotherhood of all men, a principle which was an essential element of Christian universalism and a feature common to other major religions.

33. The last part of the document was devoted to the contribution of Christians to the promotion of brotherhood and solidarity among the races.

34. The Church considered that it had a mission and obligation to achieve, first of all within itself, the unity of the human race beyond ethnic, cultural, national, social and other distinctions and thus help to promote fraternity among all peoples. The Church invited Christians to respect foreigners and to collaborate with other ethnic groups while recognizing that its members had not always behaved in that manner throughout history. The Church undertook to defend the victims of racism wherever they lived by all means at its disposal. Aware of the role of education in acquiring a non-racist outlook, it called on all schools to provide an education that would eradicate discriminatory instincts and promote brotherhood. It also called on States to support education through legislative action in defence of such groups as ethnic, linguistic or religious minorities, immigrants, refugees and temporary foreign workers.

35. The action of the Holy See should not be dissociated from the multifarious efforts being made by Christian communities throughout the world. In that connection, the document devoted a long paragraph to the efforts made by bishops in the United States and South Africa, two countries which faced serious, although different, problems of racism.

36. In South Africa, the Catholic Church highlighted the principle of non-violence, which it regarded as essential to the nature of its work. The Church sought to offer an opportunity for reconciliation and not to accentuate differences. Indeed, as a result of the increasing gravity of the dangers involved in the use of violence, what was called "passive resistance" opened up a path which was more in accordance with moral principles and no less promising.

37. In conclusion, he paid a tribute to the United Nations action aimed at ensuring respect for the human rights, freedom, and dignity of all persons without distinction of language, belief, sex or any other social or cultural condition, an action which the Holy See fully supported.

38. Mr. YUTZIS, Rapporter appointed for the preliminary examination of the tenth periodic report (CERD/C/172/Add.8) of the Holy See, expressed appreciation of the continuing dialogue which the Holy See was holding with the Committee.

39. In view of the special nature of the Holy See, the Committee should be extremely cautious and respectful in considering its report. Any action which involved politics would have to take account of the special moral, religious and universal nature of the Holy See. The Holy See was a State which in many respects represented the universality of the human race.

40. The tenth periodic report demonstrated the Holy See's concern with the question of racial discrimination and, in that connection, he drew attention to various paragraphs of the report, including paragraph 21, which referred to the efforts of local churches aimed at promoting pluralism, tolerance, acceptance of immigrants, inter-religious dialogue, the overcoming of the divisions between races, and the protection of ethnic and religious minority categories or groups.

41. He stressed the important role played by the Holy See and the Catholic Church in the transmission of values.

42. Members were aware of the struggle being waged by priests and episcopal bodies to protect indigenous people throughout the world. In that connection, he appealed to the Holy See to continue its efforts to protect those peoples. In conclusion, he said that the hope which had been born 2,000 years ago in a manger might become a concrete reality and symbol for all men of goodwill.

43. Mr. VIDAS expressed appreciation of the efforts made by His Holiness Pope John Paul II to eliminate all forms of racial discrimination.

44. Mr. SHERIFIS said that all members acknowledged the particular nature of the Holy See and the importance of the Pontiff's message to the whole world. He would like to place on record his deep appreciation of the continuing dialogue between the Holy See and the Committee.

45. He asked for information on the status of the discussions being conducted between the Roman Catholic Church and other Christian denominations.

46. Mr. de GOUTTES said that the report of the Holy See was, understandably, different from those of other States parties. The action taken by the Holy See to combat racial discrimination was perhaps less direct, but the Roman Catholic Church still wielded an enormous spiritual and moral influence. It was gratifying to note that the Church which, in the past, had perhaps associated itself rather too closely with temporal power in the world, was now working actively to promote freedom and human rights for all, as its recent role in eastern Europe had shown.

47. He would like to ask the representative of the Holy See about the attitude of the Church torwards priests who worked and shared their lives with the poorest people of their societies, particularly in Latin America. Press reports had indicated that the Church was not forthcoming in their regard. Secondly, he would like information on the role played in some western countries by ultra-conservative movements which claimed strong links with the Roman Catholic Church, and which were often hostile to immigrants or refugees.

48. Mr. AHMADU said that, given the enormous moral and religious influence of the Roman Catholic Church in the world, he wondered why the Church did not comment more quickly and forcefully on topical issues. He was thinking particularly of the international campaign against apartheid; the Special Committee against Apartheid had waited a long time for a clear-cut and assertive condemnation of apartheid from the Holy See. Likewise, in his own country, Nigeria, the Church had delayed taking a firm position on the war of secession of the late 1960s, which had had a strong religious element.

49. He also believed that the Holy See could do much to improve its public relations work. In the United States of America and many parts of Africa, black people believed that the Church discriminated against them, and the Church seemed to do little to dispel that illusion.

50. Monsignor CAUSERO (Holy See) thanked the members of the Committee for their positive comments, which would be taken into account in the next report. He particularly wished to thank Mr. Yutzis, who had highlighted the work of many ordinary priests on behalf of the disadvantaged and minority groups.

51. Mr. Sherifis has asked about the ecumenical dialogue between the Roman Catholic Church and other denominations. An illustration of that dialogue was the relationship between the Roman Catholic Church and the Orthodox Church. That relationship was a special one, since it was now accepted that there were no important differences in doctrine between the two churches, merely differences in forms of worship which had built up over hundreds of years.

The practice of reciprocal exclusion from communion had been ended, and Roman Catholics were now encouraged to attend Orthodox services if a Roman Catholic service was not available and vice-versa.

52. The main problem was the relationship between the strict Orthodox denominations and those communities which, while adhering to the Orthodox rites, recognized the authority of the Roman Catholic Pope. There was still tension between the Roman Catholic Church and the Orthodox Church, but he thought that the dialogue was too firmly established to be broken off. In general, the ecumenical situation was far better than anyone would have thought possible 30 years before.

53. He did not feel that the action taken by the Church to combat racial discrimination was as indirect as Mr. de Gouttes has suggested, although the Holy See did not have at its disposal the legislative and other measures open to other States parties. Mr. de Gouttes had asked about the attitude of the Church hierarchy towards priests who lived and worked with the poorest people in society. He himself believed that the Church's attitude towards them had relaxed in recent years and that their views were now more widely accepted. In the past, the Holy See had felt that some of the priests concerned had taken a Marxist view of the causes of poverty and the action necessary to combat it. However, there was no dispute over the fundamental aims of the Church - to protect the poorest - even if there were sometimes disagreements about how that aim was to be achieved.

54. Mr. de Gouttes had also asked about ultra-conservative groups in some Western countries. It was true that such groups often combined conservative religious views with conservative, or even totalitarian, political opinions. The Church, however, sought to emphasize the equality and dignity of all groups regardless of race or religion and, particularly in the last two years, it had increasingly emphasized the problems encountered by immigrants. In an address to the bishops of the Ile de France on 27 February 1987, His Holiness Pope John Paul II had said that Roman Catholics must welcome immigrants, even if they were of a different race and religion. It was essential, the Pope had continued, that people exiled from their own countries should find brothers and sisters in Christians in their new country, and that Christians should be receptive to the new values which believers from other religions could bring them. By such messages, the Church had shown its willingness to take action to combat any attacks on the spirit of fraternity and respect for the dignity of others. Public opinion among Roman Catholics, and Christians as a whole, seemed to have displayed a more constructive and fraternal spirit in recent years.

55. Mr. Ahmadu had said that the Holy See had perhaps not condemned the policy of apartheid as swiftly or as firmly as it should have done. He thought, however, that the Holy See had contributed greatly to the struggle against apartheid; the tenth periodic report gave details of many statements by His Holiness Pope John Paul II which condemned apartheid. The Holy See had been represented at the two World Conferences to Combat Racism and Racial Discrimination and many other international meetings dealing with apartheid, and had always firmly and unequivocally condemned the practice.

56. Mr. Ahmadu had referred to the reluctance of the Church to speak out during the war of secession in Nigeria. The position adopted by the Holy See had admittedly given rise to some concern, even among the bishops of Nigeria, but the Church generally abstained from comment on complex political issues, although it always made its position clear on the principles involved. During the Nigerian crisis, the Holy See had made considerable efforts to influence the priests who were involved in the secessionist movement.

57. In general, the Holy See was very active in combating discrimination of all kinds. The Committee, and the United Nations as a whole, could count on its continued support.

58. The CHAIRMAN thanked the representative of the Holy See for his presentation, which had highlighted the great moral and spiritual influence of the Roman Catholic Church in the fight against racial discrimination and apartheid, and the Church's efforts to support the cause of immigrants, indigenous peoples and the underprivileged everywhere. The Committee had now concluded its consideration of the tenth periodic report (CERD/C/172/Add.8) of the Holy See.

Monsignor Causero (Holy See) withdrew.

The meeting rose at 6.05 p.m.

876th meeting

Wednesday, 15 August 1990
at 10.15 a.m.

Chairman: Mr. SHAHI

In the absence of the Chairman, Mr. Vidas, Vice-Chairman took the chair

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Tenth periodic report of Hungary (CERD/C/172/Add.7)

At the invitation of the Chairman, Mr. Göndör (Hungary) took a place at the Committee table.

1. Mr. GÖNDÖR (Hungary), stressing the great importance which his country attached to the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and the work of the Committee, said that Hungary, like other States in central and eastern Europe, had firmly committed itself to the transition to democracy, as was evidenced by several recent changes in its legislation. In October 1989, the Hungarian Parliament had adopted a law amending the Constitution to state that Hungary accepted the generally recognized rules of international law and assumed the obligations stemming therefrom, the first of which was to secure respect for, and protection of, fundamental human rights.

2. The amended Constitution provided that past victims of unlawful arrest or detention were entitled to compensation. It also established the presumption of innocence. Trials were public, and defendants had a right to counsel at all stages of the proceedings. Appeals could be made against decisions taken by the courts and public administrations that infringed individual rights. People arrested must be informed in writing what offences they were suspected of committing, and could not be held in custody for more than 72 hours. Moreover, a Supreme Court ruling was required in order to extend incarceration beyond one year while criminal proceedings were in progress.

3. The Penal Code had also been amended. The provisions concerning offences against the State had been thoroughly revised: they were now restricted to offences endangering the independence or territorial integrity of the State, and no one could be executed in Hungary for committing such offences. Attacks on leading officials were no longer classified as offences against the State, and criminal proceedings could no longer be instituted against persons publicly advocating a reform of the political system.

4. In September 1989, the Hungarian Parliament had also amended the Criminal Procedure Act of 1973. Restrictions had been imposed on orders for detention without authorization from a magistrate; defence lawyers could be present during police questioning, and detention without charge was limited to one month. In addition, the Act limited the jurisdiction of military courts to offences committed by members of the armed forces and border guards. Policemen must be tried in the civil courts.

5. In 1989, all conscientious objectors in prison - 70 in all - had been released. In June 1989, the Parliament had passed a law permitting conscientious objectors to perform alternative civilian service instead of military service; those who opted for it would not be subject to reserve service. In addition, two new institutions had been established: the Constitutional Court, which was responsible for ensuring that legislation was in conformity with the Constitution, and the Ombudsman.

6. As far as freedom of movement was concerned, new laws had been adopted to permit Hungarian citizens to travel freely abroad, to emigrate and to resettle in Hungary if they so desired. The law did restrict emigration by people facing criminal charges for offences punishable by more than three years' imprisonment, or in possession of State secrets.

7. His country had acceded to the 1951 Convention relating to the Status of Refugees in March 1989, and was co-operating closely with UNHCR. It had already given shelter to refugees from a number of countries, among them Greece and Poland, but there was no comparison between that and the situation created by the inflow of Romanians, mostly of Hungarian origin, since 1987, and especially since the bloody events in Transylvania in March 1990. The Government was sparing no effort to assist the new asylum-seekers. As early as 1988 an interministerial commission and a special fund had been set up to help them. Reception centres had been established and residence and work permits were issued very promptly to refugees, who also received subsistence allowances on their arrival.

8. The Government was seeking to integrate most of the refugees into Hungarian society, and it could rely on generous assistance from the general public. The country's policy was to shelter all those whose fundamental rights were being flouted and who applied to it for asylum, and it would not fail in what it considered to be its duty, appealing, where necessary, for international solidarity.

9. Hungary had long been concerned with the fate of minorities, to which the Constitution guaranteed equal rights, the use of their mother tongue, and education in that tongue. A new minorities act was in course of preparation; it was designed, in particular, to preserve minority identities and cultures and to enable minorities to exercise all their rights so as to participate fully in the life of the nation. However, action at the national level was not sufficient: the protection of minorities required detailed and binding international rules and a supervisory mechanism. Hungary had accordingly proposed that the open-ended working group to consider the drafting of a declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities of the Commission on Human Rights should be mandated to do its utmost to complete its work by the end of 1991.

10. Finally, Hungary recognized the competence of all the United Nations commissions and committees dealing with complaints about violations of fundamental rights. It willingly agreed that it, too, should somehow be called to account, since it was convinced that such a system was of great service to the cause of human rights.

11. The CHAIRMAN invited the country rapporteur, Mr. Banton, to take the floor.

12. Mr. BANTON expressed his regret that Hungary's tenth periodic report (CERD/C/172/Add.7) did not contain figures on the population and minorities. He would like to know whether the Federations of the various nationalities had been consulted in the preparation of the report and whether they would be informed of the Committee's deliberations on the subject.

13. According to paragraph 22 of the report, "During the reporting period there were no court orders or administrative decisions in matters of racial discrimination". It would, however, be very surprising if Hungary had not been the scene of clashes between the local population and certain minority groups such as Jews, gypsies or Vietnamese workers, who had often been made scapegoats in neighbouring States. Some further information on that point, and on the measures taken to allay any tensions, would be appreciated.

14. Hungary's ninth periodic report 1/ had indicated that there had been no particular employment problem among the minorities. That affirmation would carry more weight if it were confirmed by the nationalities. He inquired whether effective remedies were available to persons who considered themselves to be victims of racial discrimination in employment, and whether minorities were informed of the existence of such remedies. Finally, referring to the massacres that had taken place in Transylvania in March 1990, in which many persons of Hungarian origin had suffered, he requested the representative of Hungary to give his opinion as to the causes of such an outburst of violence.

15. Mr. SONG Shuhua inquired whether primary education really was given not only in Hungarian but also in all the national languages spoken in the country. He noted that the situation of the gypsies seemed to have improved, and asked what percentage of them had managed to escape from poverty and had a standard of living close to that of the rest of the population. Finally, he requested details of the criteria used by Hungary to distinguish between nationalities and ethnic groups.

16. Mr. YUTZIS, referring to the question of minorities, said that Hungary was currently in a situation in which it had to choose between really solving the problems facing it or being content with reducing the tensionswhich they generated without tackling the root causes; in the latter case, of course, the fire continued to smoulder under the ashes. Previous Hungarian Governments had often chosen the second solution.

17. Would the present Hungarian Government recognize the plurality of languages and ways of life of the various minorities, and would it ensure that the latter participated in the reconstruction of Hungarian society? He expressed the hope that, if the problems became more acute, they would be settled peacefully, with respect for the interests of the various components of Hungarian society.

18. Mr. LECHUGA HEVIA welcomed the fact that Hungary had decided to make the declaration provided for in article 14 (1) of the Convention; he was, however,

concerned about the fate of the minorities in Hungary. He asked what legislative measures the Hungarian Government was thinking of taking in order to guarantee the rights of those minorities.

19. In addition, he was surprised that the Hungarian Government had re-established trade and economic relations with the racist regime of South Africa and pointed out that, in its resolution 1990/70, the Economic and Social Council had condemned Hungary for its incomprehensible volte-face.

20. Mr. WOLFRUM asked what had come out of the congresses which, according to paragraph 25 of the report (CERD/C/172/Add.7), the democratic associations of Germans, Southern Slavs, Slovaks and Romanians had been due to hold in 1988. He also asked to what extent ethnic groups were represented in the Government, Parliament and the higher levels of the civil service, and what effects Act No. 1 of 1985, had had on the languages in which education could be imparted (ibid., para. 26).

21. In conclusion, he inquired whether measures had been taken to preserve the cultural identity of the ethnic minorities in Hungary, whether the latter were represented in the new parties, and whether they were legally authorized to constitute their own parties.

22. Mr. FERRERO COSTA expressed the hope that Hungary's next report would contain some precise and specific demographic information, particularly on minorities.

23. Paragraph 17 of the tenth periodic report (CERD/C/172/Add.7) stated that the Convention was enforceable. Was that rule still valid at the moment? Furthermore, were the offences mentioned in article 4 (a) of the Convention punishable by law, as was required under the Convention?

24. He was concerned over the situation of the gypsies, who constituted the largest minority in Hungary. He welcomed the honesty of the Hungarian Government, which recognized, that the percentage of gypsies who were disadvantaged in relation to the average was still high (ibid., para. 28). He would like further details of the situation of the gypsy minority - in particular, whether gypsies suffered discrimination in the field of civil, political and economic rights. He would also like to know what part the minorities - not only the gypsy minority - were playing in the fundamental and positive changes taking place in Hungary.

25. Introducing his country's report, Mr. Göndör had stated that his Government was convinced that the free exercise of individual and collective rights by the Hungarian national minorities living in neighbouring countries was not only an important matter of domestic policy, but also an indispensable prerequisite for stability and balanced development in the region and the continent as a whole. How did the Hungarian Government intend to tackle that problem specifically? Was it thinking of concluding an agreement with the neighbouring countries, and had it ever considered bringing the matter to the attention of the Committee, as it was able to do under article 11 of the Convention?

26. In conclusion, he would like to have some details of the functions of the recently inaugurated Ombudsman to which Mr. Göndör had referred, and to know what role the Ombudsman would play in the campaign against discrimination.

27. Mr. de GOUTTES expressed his satisfaction at the profound changes taking place in Hungary and at the declaration which the Hungarian Government had made under article 14 (1) of the Convention. He thanked the representative of Hungary for having usefully supplemented the information given in the tenth periodic report (CERD/C/172/Add.7), which, unfortunately, was more concerned with the International Covenant on Civil and Political Rights than with the Convention.

28. Since, according to paragraph 17 of the report (CERD/C/172/Add.7), the Convention was enforceable in Hungary, he asked why, according to the same paragraph, the courts had not taken any decision to enforce its provisions during the reporting period. Were ordinary people, and particularly the gypsy minority, poorly informed, or were they being hindered in their assertion of the rights set forth in the Convention? It was difficult to believe that no act of discrimination had been committed, given the size of the minorities in Hungary and the influx of refugees mentioned by its representative. The next report ought to include more comprehensive information on all those questions.

Mr. Lamptey (Vice-Chairman) took the Chair.

29. Mr. RESHETOV stressed that, since Hungary was undergoing substantial changes, the Committee should give it its full attention. He was sorry so little information had been supplied about the minorities in Hungary itself; questions about a national minority living in a foreign country could be put to the Government of the country concerned.

30. He inquired how the government organs had carried out the tasks mentioned in paragraph 25 of the report (CERD/C/172/Add.7), whether there were any constitutional provisions governing the status of the nationalities, and how the principle of equality, so often alluded to by Hungary in connection with nationalities, was applied in practice.

31. He agreed with the representative of Hungary that the question of national minorities was closely connected with the stability of individual countries and of the international community. Moreover, the decisions taken at the CSCE Conference on the Human Dimension held at Copenhagen from 5 to 29 June 1990 2/ pointed entirely in the same direction, and the idea was present to some extent in Mr. Asbjørn Eide's report 3/ on the protection of minorities.

32. Introducing his country's report, the representative of Hungary had stated that the Penal Code labelled any act threatening the independence or territorial integrity of the State as a crime against the State. That principle had also been recognized at the Copenhagen meeting. Did Hungary consider that the two principles - respect for independence and territorial integrity and respect for the rights of minorities - were valid for all countries?

33. Furthermore, what exactly did the Hungarian Government understand by "national unity"? Did Hungarian legislation recognize the right to self-determination in its various forms?

34. Mr. AHMADU welcomed the rapid democratic changes that were taking place in Hungary and thanked Hungary for opening its universities to many students from the third world. He expressed his appreciation of the efforts being made by the Hungarian Government to treat all citizens on an equal footing and his satisfaction that Hungary had made the declaration provided for in article 14, paragraph 1, of the Convention.

35. Surprisingly, the representative of Hungary had not made the slightest reference to apartheid. It was deplorable that at a time when it was establishing a State subject to the rule of law, Hungary, which, according to paragraph 19 of the tenth periodic report (CERD/C/172/Add.7), had vigorously combated apartheid, should have received the South African Minister for Foreign Affairs and decided to resume economic and trade relations with the racist regime in Pretoria.

36. Mr. GARVALOV welcomed the current developments in Hungary. The question of minorities was at the heart of many European countries' concerns, as the Copenhagen meeting had revealed, and in many cases whether special rights should or should not be accorded to a particular minority had become an issue. Although it seemed that the granting of special rights could constitute a violation of article 1 of the Convention, was Hungary thinking of conferring such rights on its minorities? In any case it should be pointed out that the 35 European States that had met at Copenhagen in June 1990 had stressed that minority rights could in no case be invoked as grounds for challenging the territorial integrity of the States concerned.

37. Mr. VIDAS, thanking Mr. Göndör for his interesting oral introduction, expressed his pleasure at the reforms taking place in Hungary; only democracy could provide the conditions needed for a genuine respect for human rights. In his view, it would be helpful if Hungary's next periodic report could contain some precise demographic data.

38. Were the minorities represented in the Hungarian Parliament, and if so, in what proportions? What were the results of the congresses which, according to paragraph 25 of the report (CERD/C/172/Add.7) under consideration, were to have been held in 1988? Finally, what new steps that might affect the situation of the minorities had been taken since the report had been drawn up?

39. Mr. GÖNDÖR (Hungary) thanked the Committee for the interest which it had shown in his country. He acknowledged at the outset that it was difficult for him, at a time when his country was in transition, to give a stable picture of the situation with regard to non-discrimination. In any case, the next periodic report would make good any deficiencies in his oral replies.

40. As Mr. Banton had pointed out, Hungary's decision to make the declaration provided for in article 14 of the Convention would have important consequences, since the Committee would thus be able, if necessary, to

establish direct contact with individual Hungarians or groups. In fact, such a step was also a move towards democratization, and that was why the Hungarian Government had taken it.

41. In reply to Mr. Banton's question, he explained that the 500,000 to 700,000 gypsies in Hungary were now recognized as a national minority on the same footing as other minorities. After their congresses in 1988, the associations of minorities had approved the Hungarian Government's new policy, but tensions had appeared among them precisely because of the new policy. For example, the Federation of Serbs, Croats and Slovenes had been shattered by the secession of the Croats and Slovenes. At the time of the parliamentary elections, a number of federations had also faced difficult challenges. Finally, under the new economic policy, the public authorities had ceased to subsidize the federations automatically, and they had had to find other resources. Autonomy, self-sufficiency and independence could be said to be the new watchwords of the new minority organizations. Still, the Government had not entirely abandoned associations, which could not survive without its help. It had created a State Secretariat for Minorities, although the Ministry of Culture and the Ministry of Education were still chiefly responsible for minorities.

42. The most spectacular initiative had been the preparation of a new national minorities act, which had led to intense debates among the representatives of the minorities. That matter would, of course, be dealt with in the next periodic report. Mr. Banton had referred to racial tensions in certain neighbouring countries. He could rest assured that, although Hungary was also threatened by such tensions, the Government was fully aware of the dangers of creating scapegoats, and was doing its utmost to prevent that kind of reaction from spreading, in part by means of existing legislation but without neglecting the moral and civic education of the population.

43. Replying to a question put by Mr. Song Shuhua, he described the process of differentiation at work in gypsy society, which currently consisted of three strata. In the first (25 per cent of the total), the level of development was the average for the Hungarian population; in the second (50 per cent), it was that of the least advanced sectors of society; and the third stratum (25 per cent) was completely marginalized. The Government, which had set itself the target of integrating the gypsies into the rest of society as soon as possible, was focusing its efforts on gypsy children from three to six years of age, in other words the age group most susceptible to adjustment, through schooling.

44. He assured Mr. Yutzis that his comments would be brought to the attention of the Hungarian Government and said that, in so far as article 3 of the Convention was concerned, the new Hungarian Government had not changed national policy, for it had not ceased to condemn apartheid. Nevertheless, the Government now intended to conduct an independent, peace-oriented foreign policy, and it considered that the problems in southern Africa had to be settled by taking into account the interests of all countries in the region. That was one reason why Budapest had established contacts with Pretoria, at the level of ministers for foreign affairs; but the Hungarian Government had always maintained that it would establish full relations with the Government of South Africa only when apartheid had been abolished. The Committee

should also be aware that there was a large Hungarian community of some 20,000 persons in South Africa, and it was normal that the Hungarian Government, like other Governments, should wish to maintain contact with the national diaspora.

45. Several questions had been asked concerning minority languages. That was a fundamental problem. In many localities bilingualism was frequent, and trilingualism was not uncommon. Many people knew Hungarian better than their national language, which they often spoke only in dialect form. When the minorities were dispersed the situation was even more complicated, and protecting minority cultures was a sensitive problem. For example, in certain small villages it was very difficult, for lack of teachers, to implement Act No. 1 of 1985 concerning education in the national languages spoken in Hungary (CERD/C/172/Add.7, para. 26). In some cases neighbouring countries such as Yugoslavia or the Federal Republic of Germany had provided valuable assistance. In areas with a large minority population, the teaching of their languages was obligatory in schools attended by the Hungarian majority.

46. The question of parliamentary representation for the minorities had given rise to passionate debates. In the present legislature, the minorities had 18 deputies, including 2 gypsies, compared with 14 deputies in the previous legislature. Out of a total of 368 deputies, that was not many, and in present circumstances, the minorities could not really be said to be represented in Parliament. A bill to establish a bicameral system was under study, and a lower chamber would very likely give the minorities more opportunity to assert their rights. There were also plans to create Ombudsmen for national minorities.

47. None of the amendments to the Constitution and Penal Code seemed likely to affect the implementation of the Convention.

48. He was sorry the Committee had got the impression that his Government was more interested in its nationals abroad than in citizens of other countries residing in Hungary. It was true that Hungarians were very interested in the welfare of their relatives and acquaintances abroad, but that did not by any means imply that minorities were ignored in Hungary. In the case of Yugoslavs, for example, there was exemplary cooperation with Yugoslavia in the form of school and cultural exchanges and developed scientific cooperation.

49. He was sorry that he had not been able to reply as precisely as he would have wished to certain questions from the Committee, but his country was passing through a transitional period. The next periodic report would provide a complete picture of the situation, taking into account the comments made at the current meeting.

50. The CHAIRMAN thanked the representative of Hungary for his statement and expressed particular satisfaction at Hungary's declaration that it recognized the competence of the Committee under article 14 of the Convention. He said that the Committee had concluded its consideration of the tenth periodic report (CERD/C/172/Add.7) of Hungary.

Mr. Göndör (Hungary) withdrew.

Mr. Shahi took the Chair.

Initial report and second and third periodic reports of the Dominican Republic (CERD/C/165/Add.1)

At the invitation of the Chairman, Mrs. Bonetti Herrera (Dominican Republic) took a place at the Committee table.

51. Mrs. BONETTI HERRERA (Dominican Republic) informed the Committee that the person who had been due to represent her country before the Committee had had to return hurriedly to the Dominican Republic. She herself would not be able to take an active part in the Committee's proceedings, but she would inform her Government of the contents of the discussion and the questions put concerning the report.

52. Mr. SONG Shuhua remarked that although the layout of the document combining the three reports was fully in conformity with the Committee's guidelines, the contents were far too brief, particularly since the reporting period covered five years. He would, however, make a few comments on the information supplied.

53. Paragraph (a) of Part I stated that Dominican legislation contained no provision to deal with racial discrimination. That was too hasty a way of disposing of the question. He would like to know whether, in the Dominican Republic, the national authorities, particularly the courts, really were in a position to implement the Convention. The first paragraph of Part II of the report stated, that the Dominican Republic was complying fully with the requirements of article 2 (1) of the Convention. Would it be possible to obtain a few specific examples of that? With regard to apartheid, dealt with in article 3 of the Convention, he was pleased to note that the Dominican Republic's position vis-à-vis South Africa was unambiguous.

54. The issues on which the report (CERD/C/165/Add.1) supplied the most concrete information related to article 5 of the Convention. Some points still needed to be clarified. For example, what was the average level of education among the children of the black minorities in the Dominican Republic? Did the minorities maintain relations with the countries from which they came?

55. He trusted that the Dominican Government would reply to those questions, and others, in its next periodic report.

56. Mr. WOLFRUM said he agreed with the previous speaker and wished, in turn, to ask some questions. The reference made, in the first paragraph of the report (CERD/C/165/Add.1, Part I), to article 100 of the Constitution of the Dominican Republic, according to which no organ of the Republic could confer titles of nobility or hereditary distinctions, covered only part of the obligations set forth in article 2 of the Convention. Even if there were no cases of racial discrimination in the Dominican Republic, which was, after all, unlikely, the Government was still bound to comply with the obligations set forth in the Convention. Moreover, although the report under consideration did, in fact, supply certain information on the implementation of article 5 of the Convention, article 9, paragraph 1, of the Convention

stipulated that States parties must submit a report on the legislative, judicial, administrative or other measures which they had adopted and which gave effect to the provisions of the Convention.

57. The report indicated that article 13 of the Constitution accorded citizens the right to vote. However, no information was given on the conditions to be fulfilled in order to exercise that right or on the living conditions of the ethnic minorities in the Dominican Republic. The Centre for Human Rights could provide the Dominican Government, if it so desired, with all the information it needed to prepare its next report.

58. Mr. de GOUTTES endorsed the comments made by the two previous speakers. He wished to revert to the assertion in the report (CERD/C/165/Add.1, Part I) that there was no racial discrimination in the Dominican Republic. Amnesty International's latest report referred to alleged discrimination against Haitian immigrants in the Dominican Republic, who were said to be forced to work on sugar-cane plantations in particularly arduous conditions. He would like to have some clarification of that point, since it could involve a violation of rights covered by article 5 of the Convention.

59. Mr. YUTZIS joined his colleagues in asking for the next periodic report by the Dominican Republic to contain more specific information on the implementation of the Convention. He also recommended the authors of the reports not to neglect the advisory services available at the Centre for Human Rights.

60. Mr. AHMADU said that he did not fully understand the demographic composition of the Dominican Republic as presented in the report (CERD/C/165/Add.1). It seemed that a distinction had been made between African blacks and blacks of other origins. He was inclined to believe that such a distinction could be a form of racial discrimination. Furthermore, it would have been clearer to indicate the distribution of the population in figures rather than percentages.

61. The CHAIRMAN said that, in the absence of the official representative of the Dominican Republic, consideration of that country's report (CERD/C/165/Add.1) could be considered to be concluded.

Mrs. Bonetti Herrera (Dominican Republic) withdrew.

The meeting rose at 1.15 p.m.

Notes

1/ CERD/C/149/Add.9.

2/ See International Legal Materials, vol. XXIX, No. 5, September 1990.

3/ E/CN.4/Sub.2/1990/46.

877th meeting

Wednesday, 15 August 1990
at 3.20 p.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Eighth and ninth periodic reports of New Zealand (CERD/C/184/Add.5)

At the invitation of the Chairman, Mr. Hannah and Ms. Higgie (New Zealand) took places at the Committee table.

1. Mr. HOUSHMAND (Representative of the Secretary-General) apologized to the Committee for the fact that New Zealand's consolidated report (CERD/C/184/Add.5) had been issued only in English. The report reached the Secretariat in June 1990 and had not originally been scheduled for consideration at the current session. It had, however, been possible to provide a reviser's draft in Spanish and a partial translation into French.

2. Mr. HANNAH (New Zealand) thanked the Committee for taking up his country's report at such short notice. The document, which combined the eighth and ninth periodic reports (CERD/C/184/Add.5), covered a four-year period ending in December 1989. A major development had been the restructuring of the Department of Maori Affairs, with the formation in 1989 of the Ministry of Maori Affairs and of the Iwi Transition Agency, which aimed to strengthen the operational base of iwi (tribes). For the first time, the Government had recognized the role played by the iwi in controlling and delivering services to Maori people. The Ministry of Pacific Island Affairs was continuing its work to promote the development of Pacific Island people and their participation in New Zealand life.

3. In 1990, New Zealand was celebrating the one hundred and fiftieth anniversary of the signing of the Treaty of Waitangi, which governed the relations between the Crown and the Maori people of New Zealand. A set of five principles, "The Principles for Crown Action on the Treaty of Waitangi", had been published to make clear the Government's responsibilities and obligations in honouring the Treaty. An explanation of those principles was given in paragraphs 7-11 of the report. Steps had recently been taken to speed up the work of the Waitangi Tribunal, which considered alleged breaches of the Treaty. The Tribunal had made two important recommendations in the period covered by the report: the Te Reo claim, which sought to give official status to the Maori language, had been endorsed by the Government in the Maori Language Act of 1987, leading to the establishment of the Maori Language Commission. The second, the Muriwhenua claim, had led to the passage of the Maori Fisheries Act of December, 1989, which had transferred 10 per cent of New Zealand's fishing quota to the Maori Fisheries Commission. It was still too early to say, however, what effects those initiatives would have in practice.

4. The implications of the Treaty of Waitangi had been recognized in the development of public service recruitment policies, and government departments had adopted a bicultural approach. The State Sector Act provided equal opportunities for recruitment to the public service for Maori people and other ethnic minorities.

5. The Maori people now accounted for over 12 per cent of the population, and people of Pacific Island Polynesian descent, for about 4 per cent. The period covered in the report had been one of major economic reforms, which had had a disproportionate effect on the Maori. Further imaginative measures would be needed to achieve the goal of racial equality. The enhanced role given to the iwi and the creation of the Iwi Transition Agency provided the best prospects for real progress.

6. The report acknowledged that the health and education needs of the Maori had not been adequately met. Specific measures had been introduced, in consultation with the Maori, which made use of traditional practices. One particular success in the field of education had been the Te Kohanga Reo programme for preschool children, which now catered for one third of Maori children under the age of five. There were plans to establish Kura Kaupapa Maori, or primary schools, on the basis of the Te Kohanga Reo experience. The Race Relations Act of 1971, which was designed to combat discrimination or incitment to racial disharmony, was enforced through a system of conciliation, backed up by civil proceedings and, in some cases, by criminal proceedings. The Human Rights Commissioner and the Race Relations Conciliator had concluded that the Act was useful and basically sound. The Race Relations Conciliator had, however, recommended an amendment to the Act, which had led to the adoption of the Race Relations Amendment Act of 1989.

7. In respect of the struggle against apartheid, referred to in article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, New Zealand had implemented all the measures recommended by the Commonwealth and the sanctions recommended by the United Nations Security Council. The Government was prepared to comply with any further measures adopted by those two bodies. The Government had also taken a strong stand against sporting links with South Africa. The only significant departures from that principle had been in 1986, when two rebel sports teams had toured South Africa. All the major sports bodies in the country had now recognized the Government's firm position, and sporting contacts between the two countries had been virtually eliminated.

8. Finally, racial equality was a fundamental principle of New Zealand society. The country was committed to a partnership between different races and sought to draw on its diverse heritage to enrich the lives of the people and strengthen their sense of nationhood.

9. Mr. WOLFRUM, Rapporteur appointed for the preliminary examination of the eighth and ninth periodic reports (CERD/C/184/Add.5) of New Zealand, said that the consolidated report set out the legislative, judicial and administrative measures adopted by New Zealand, covering also the Cook Islands, Niue and Tokelau. It concentrated on the legal, economic, social and cultural

situation of the Maori people, and its structure reflected the bi-ethnic, rather than multi-ethnic, nature of New Zealand society. The report had been prepared in accordance with the Committee's guidelines.

10. Paragraphs 17 to 21 of the report gave details of the demographic composition of the New Zealand population. According to the figures given, which dated from 1986, the Maori population made up 12.4 per cent of the total, and was increasing at a rate of 8.6 per cent per annum, as opposed to 4.2 per cent in 1961. The Pacific Island Polynesian population was increasing at a similar rate. What was the reason for that rapid increase, and what was the corresponding figure for the population of European descent? Was it true that New Zealanders had started to emigrate from the country, and did that emigration affect the country's demographic composition?

11. In paragraph 18, the report stated that 405,309 people had claimed to be of Maori descent in the 1986 census, while table 1 put the figure at 404,778. Why was there a discrepancy between the two figures, and how did an individual come to be classified as being of Maori descent - by self-identification, by other Maori, or in some other way? The question was important, since The Maori were entitled to certain rights under the Treaty of Waitangi. Under what rules was an individual assigned to a particular iwi (tribe), and were there any Maori who did not belong to an iwi at all?

12. The report had devoted considerable attention to the Treaty of Waitangi of 1840. The Treaty, which had only three articles, had existed in both an English and a Maori version, which were by no means identical. The Maori version had been signed by 50 chiefs on 6 February 1840 and subsequently by 500 further chiefs. The English version had been signed by 39 chiefs in April 1840. The provisions of the Treaty had not been observed during the Maori wars of the 1850s, nor in the Land Acts passed in 1862, 1865 and 1893, with the result that land held by the Maori had been reduced from 66 million acres in 1840 to 3 million acres in 1990. He would like to know what the status of the Treaty had been when it was concluded in 1840, and what its status was today - an international agreement, a binding national agreement or a document dependent for its legal effect on the acts referred to in the report? It appeared that there had been many fruitless attempts to have the Treaty ratified, including an attempt to include it in a bill of rights, as stated in paragraphs 30 and 31 of the report. Nevertheless, it was clear that, whatever its legal status, the Treaty played a significant role in the New Zealand legal system.

13. Paragraph 36 of the report stated that the Treaty had been signed by "representative Maori chiefs of different tribes" and the British Crown. Were those tribes the only ones to benefit under the Treaty or had it been extended to cover all tribes and, if so, on what authority? How were conflicting claims between different tribes resolved? How good were the relations between tribes?

14. Paragraphs 7-11 of the report outlined the five principles laid down by the Government in the 1989 document, "Principles for Crown Action on the Treaty of Waitangi". Why had the principles been thought necessary, and had they been worked out in consultation with the Maori; if so, why was Maori

reaction to the principles "mixed"? The Maori Council had identified 10 important principles derived from the Treaty, which were by no means identical with those defined by the Government.

15. The Waitangi Tribunal had been established in 1975 in accordance with the Treaty of Waitangi Act, which had since been amended by the Treaty of Waitangi Amendment Acts of 1985 and 1988. The 1988 Act removed the requirement that a majority of the members should come from the Maori community, stating instead that the ethnic mix of the Tribunal should reflect the ideal of partnership embodied in the Treaty itself. That seemed a very vague formula, and he would like to know why the change had been thought necessary. What was the current ethnic composition of the Tribunal? How were judges selected, and were they fully independent?

16. The Tribunal had produced recommendations on only eight cases in its 15 years of existence, although he would be glad to know how many cases it had actually studied in that time. He would also like to know the exact legal standing of the Tribunal and the factors upon which it based its recommendations. The recommendations were not binding, although the Government clearly paid a good deal of attention to them. According to the Treaty of Waitangi Amendment Act of 1985, claims for "breaches of Maori rights" - a vague term which he would like to have more clearly defined - could be submitted in respect of incidents dating back to 1840. That provision would surely cause problems; for instance, a claim might be brought about purchases of land from the Crown which had taken place quite legally under the Land Purchase Acts of the 1860s. If such claims were upheld, would the Maori be entitled to have the land back, or merely to receive compensation? The Ngati Marawaho tribe had protested against the building of a civic centre on their ancestral land; what decision had been reached in that case?

17. What was the Maori Land Court referred to in paragraph 47 of the report? Who were the members and what were its functions? Was it only for Maori and, in general, how did it fit into the New Zealand court system as a whole?

18. The report mentioned in paragraph 71 of the report that the parliamentary representation of the Maori was not yet fully commensurate with their numbers in the population, and went on, in paragraph 72 to outline a change in the electoral registration procedure, introduced in November 1989, whereby unregistered Maori people would be attributed not to the General Roll but to the Maori Roll. What was meant by the term "unregistered persons" in that context and was there not a possibility that the new electoral system would result in members of an ethnic group being registered as such as against their will? He also wondered why the New Zealand Government had not pursued the idea, first discussed a few years previously, of introducing a proportional voting system, which would ensure more adequate Maori participation in Parliament.

19. The section of the report dealing with the economic situation of the Maori (paras. 75-107) was somewhat unspecific. It stated in paragraph 79 that unemployment among Maori and Pacific Islanders was high, but failed to give comparative unemployment and average-income figures for those groups vis-à-vis the rest of the population. Further information was also needed on the

numbers of Maori and Pacific Islanders holding senior posts in the civil service and industry, and on measures to improve their housing situation, which since 1986 was reported to be markedly worse than that of the population of European origin.

20. The report mentioned in paragraph 125 that a disproportionately high percentage of Maori had been sentenced for criminal offences, and it referred in paragraph 121 to the programme for young Maori "at risk". Did "at risk" mean that the young people had already committed an offence, and was the programme intended as a substitute for imprisonment or custody? Recalling that in recent years there had been complaints of ill-treatment from Maori placed in care under the programme, he wondered whether the same human rights standards in that respect were applied to Maori as to other citizens. A similar query regarding standards arose in connection with the marae-based health centres referred to in paragraph 134.

21. The 1986 report, Puao-te-Ata-tu, mentioned in paragraphs 127 and 129 seemed to define as orphans children whose parents were not able to provide responsible care. He asked who determined whether the care was responsible, and who provided the care afterwards in such cases.

22. With regard to the protection of Maori culture, he would like to know whether measures had been taken to prevent the export of Maori artefacts and works of art.

23. The eighth and ninth periodic reports gave detailed and full information on the implementation of article 3 of the Convention, and the Government of New Zealand seemed to have severed its ties with South Africa thoroughly and comprehensively.

24. Turning to the rights covered by article 2, he noted that the efforts to introduce a Bill of Rights had so far proved fruitless, for reasons which were not made clear. It appeared that a new bill had been introduced, and he would like to know how it differed from its predecessor, and how it would relate to such international human rights instruments as the two International Convenants on Human Rights. Did it contain a provision on the prevention of discrimination?

25. Paragraphs 13 to 16 of the report outlined changes in the Race Relations Act, but he would welcome information on how the newly introduced procedure would raise the threshold at which language came within the ambit of the Act. According to paragraph 167, complaints under the Act had declined in number: was that the result of the new procedure?

26. In relation to article 5 of the Covenant, he noted that country quotas had been abandoned in New Zealand's refugee programme. In his view, the change in policy should lead to an improved situation, in that the country quota system was liable to result in discrimination, and the new arrangements were more closely in line with the provisions of the Convention.

27. With reference to article 7 of the Convention, the report (para. 204) stated that, in spite of efforts to improve the educational situation of the Maori, the gap between the Maori and citizens of European descent was still

wide in that respect. It seemed that policies in the educational sector might lead to a further polarization of the Maori population and other New Zealand citizens, which would be contrary to the spirit of the Convention. The Government obviously faced a dilemma, since the needs of economic and social development had to be weighed against the legitimate aspiration of the Maori to preserve their identity and culture. The problem was of great importance and should be discussed in depth by the Committee in the context of article 7, paragraph 2, of the Convention. He would welcome the views of the representative of New Zealand on that subject.

28. Although it emerged from paragraph 205 of the report that attempts had been made to accommodate the rights of the Maori in the educational system, no similar initiatives had been taken on behalf of other ethnic minorities. While the Maori, as the indigenous population, merited special treatment, it should not lead to discrimination against other ethnic groups.

29. In conclusion, he thanked the New Zealand Government for its very valuable report, which should be given the widest possible circulation.

30. Mrs. SADIQ ALI, after congratulating the New Zealand representatives on their Government's detailed and factual report, asked for further information on the Ministry of Pacific Island Affairs referred to in paragraph 25 of the report (CERD/C/184/Add.5). Given that the islands concerned were independent of New Zealand, she wondered how it was that the Ministry came under the aegis of the New Zealand Government.

31. With regard to the Department of Maori Affairs, whose functions were outlined in paragraph 62, she wished to know whether Maori themselves were solely in charge of administering the Department. The same question could be asked in connection with Trust or Management Committees to which reference was made in paragraph 94.

32. According to paragraph 75, the impact of economic restructuring in the forestry, coal and freezing industries had been particularly severe among certain Maori communities. She asked what steps were being taken to alleviate the situation, and whether the problem of the high level of unemployment in the Maori population, the reasons for which were not fully explained by the report, was being addressed at government level.

33. Like the previous speaker, she would welcome information on the penal system as it affected the Maori, and asked whether in fact a kind of dual system was in operation in New Zealand, and if so how such a system could be reconciled with the principle that all citizens were equal before the law. Specifically, she requested figures for the number of Maori in penal institutions, which was stated in paragraph 125 to be disproportionate. She also shared Mr. Wolfrum's concern at the disparity between the educational achievement of the Maori and non-Maori populations to which reference was made in paragraph 138.

34. Noting from paragraph 131 that the Department of Social Welfare had established service programmes for refugees and Pacific Island people, she said that it would be useful to have additional information on the activities undertaken under the two programmes.

35. The significant recent decline in complaints under the Race Relations Act was attributed in paragraph 167 to a "tightening up" of the legal and investigation procedures of the Race Relations Office. She would be grateful for further details regarding the new procedures.

36. In connection with immigration, which was discussed in paragraphs 189 to 193, she asked whether there had been any significant immigration of Indians from Fiji.

37. In conclusion, she congratulated the New Zealand Government on its firm commitment to maintaining sanctions against South Africa until substantial and irreversible political progress had been made in that country.

38. Mr. de GOUTTES commended the New Zealand report (CERD/C/184/Add.5) for the comprehensive information it provided and its honest, objective assessment of both the strengths and the weaknesses of the prevailing situation. Attention had been drawn to areas in which the Maori population was relatively disadvantaged in paragraph 71 on electoral representation, paragraph 79 on unemployment, paragraph 96 on housing and paragraph 121 on the penal system.

39. By way of general comment, he said that the report justifiably placed emphasis on the situation of the Maori people, but in doing so had neglected the situation of other minorities, such as Asian and other immigrants, who were increasing in number, as shown in table 5. It would be useful if additional information could be provided in the next periodic report on the situation of those minorities.

40. As a magistrate, he was particularly interested in the question of juvenile delinquency among Maori, referred to in paragraphs 121 to 123. Those paragraphs described a unique programme designed to prevent the flow of "at risk" young Maori into penal institutions through a system of rehabilitation involving tribal structures as a practical alternative to internment. He wished to know at what stage those tribal structures came into play. Were the young Maori taken into care before or after the event? If such placement was a preventive measure, before an offence was committed, implying, as it were, a new form of social control, what criteria were used to determine the persons at risk? If it occurred after an offence had been committed, was it a substitute for the formal penal system or an alternative form of punishment, replacing the sentence? Was it an experiment in decriminalization, or was it effected under the control of the courts, in which case it would be merely an alternative sentence? The experiment was one of great interest and as such required further clarification.

41. Mr. YUTZIS said that so comprehensive a periodic report (CERD/C/184/Add.5) deserved more thorough consideration than had been possible in so short a time and he, for his part, would examine it in greater depth in order to amplify his own questions when New Zealand's next periodic report was before the Committee. New Zealand provided an example of a modern society of great ethnic diversity and complexity, raising problems that required very careful handling.

42. The reference in paragraph 41 of the report to the "additional obligations" of the partners concerned by the Treaty of Waitangi required some

explanation, since the requirement of loyalty by Maori to the Queen and her Government seemed to imply that there was some lack of loyalty. Referring to paragraph 47, he wished to know how many Maori were members of the Waitangi Tribunal. Paragraph 52 referred to the rather slow progress made in claims on environmental matters. Was the delay due to the complexity of the claims, slow bureaucratic procedures or other reasons. Subparagraph 2 of paragraph 60, concerning the Government's objectives in Maori affairs, alluded somewhat obscurely to disparities between the well-being of Maori people and that of the general population that did not result from individual or cultural preferences. From what, in fact, did they result? While he commended the very honest admission in paragraph 71 of the report that Parliamentary representation of the Maori was not fully commensurate with their numbers in the population, he would welcome an explanation of the causes of that situation. Again, he wished to know why the impact of economic restructuring had been particularly severe amongst Maori communities in certain regions, as stated in paragraph 75; that seemed to suggest that Maori were paying for the consequences of the economic crisis. What were the interests and social pressures, if any, that caused precisely that sector of the population to be affected?

43. It emerged from paragraphs 76 and 77 of the report that a decision had been taken to encourage Maori development by creating specifically Maori companies. He appreciated the good will of the Government in establishing such companies, but wondered whether, perhaps unconsciously, that did not constitute a discriminatory measure. It was not a question of preserving an ethnic group's cultural or historical identity, but of fostering its economic development. If the provisions of article 5 of the Convention were to be pursued to their logical conclusion, no one ethnic or racial group should be singled out for favoured treatment. A similar question had arisen during the current session in connection with differentiated schools in another reporting country. It seemed that, in seeking in all good faith to solve problems of multicultural integration, for instance by establishing special schools or enterprises, some States came dangerously close to non-compliance with the provisions of the Convention.

44. Mr. BANTON said, in connection with the reference to multiculturalism in paragraph 206 of the report (CERD/C/184/Add.5), that there was a distinction to be drawn between a multicultural society and a society that was culturally diverse, the first implying a society with a finite number of cultures that could be specified, and the second implying diversity or cross-cultural influences without requiring an enumeration of the cultures involved. If, as appeared from the opening paragraphs of the report, New Zealand was a bicultural society, then the report was singularly one-sided, referring only to relations between the Government and the Maori people, with no mention of the Pakeha or European population. His impression was that the report was describing a remarkably successful example of government-led action to influence Pakeha opinion, but failed to account for the very significant changes in that opinion and indeed its historical development over the previous 25 years. Nothing was said, for instance, about racist-type or white people's defence movements, which had indeed failed in New Zealand because they had received little support from the Pakeha population.

The meeting was suspended at 5.05 p.m. and resumed at 5.35 p.m.

45. Mr. HANNAH (New Zealand), referring to questions raised by Mr. Wolfrum relating to population matters, said that the significant increase in the Maori population was due to a combination of factors: a higher fertility rate, a more youthful age structure, and a longer life expectancy than in the past. With regard to the parallel increase in the Pacific Island Polynesian population, the same factors played a primary role, together with immigration.

46. New Zealanders of European descent had increased by 2.3 per cent during the period 1981-1986. As a proportion of the total population, they had decreased from 83.4 per cent in 1981 to 82.2 per cent in 1986 as a result of the larger increase in the number of persons of Maori and Polynesian descent.

47. Where recent emigration from New Zealand was concerned there was a strong inclination for young New Zealanders, including Maori, to leave the country to seek better economic opportunities elsewhere. They usually went to Australia with which New Zealand had visa-free travel arrangements.

48. The method used to determine whether a person was of Maori descent or belonged to a particular tribe was self-identification. Therefore, paragraph 18 of the report (CERD/C/184/Add.5) referred to persons claiming Maori descent. With respect to land ownership, Maori land courts might determine who was or was not a Maori. It was quite common for a Maori to have links with several tribes. It was not possible for a Maori not to belong to any tribe.

49. With regard to the Treaty of Waitangi, it had been signed in 1840 between representative Maori chiefs of different tribes and the British Crown and had made possible the colonization of New Zealand. The Treaty had never been formally incorporated in New Zealand law and consequently a number of early unfortunate court decisions had failed to give effect to its principles. The situation was entirely different at the present time. The Treaty could even be regarded as having a higher status in the courts than that of an Act of Parliament. At the political level, there was an extremely strong commitment to honour its provisions. In recent years, a positive and dynamic view of the Treaty had emerged whereby it was seen as a living social contract and the cornerstone of a positive bicultural relationship between the Maori people and other New Zealanders. The periodic report described some of the ways in which the Government had been working to achieve that goal.

50. With regard to the beneficiaries of the Treaty, there was no question of Maori tribes being excluded from its provisions and the Treaty was viewed as applying to all New Zealanders, including recent immigrants.

51. With regard to the relationship between the various New Zealand Maori tribes at the present time, there was no hostility between them and their harmonious and constructive relationship was exemplified by a recent important development within Maori society. A large number of iwi throughout the country had held a National Maori Congress made up of representatives from each iwi. The Congress had been set up on a continuing basis and its aims included the advancement of all Maori people, the provision of a national forum for iwi representatives to address economic, social, cultural and

political issues, and the promotion of constitutional and legislative arrangements which would enable the Maori people to control their right to development and self-determination.

52. The five principles elaborated by the Government for Crown action on the Treaty of Waitangi provided a clear definition of the Government's responsibilities and obligations. They recognized the extent of the Maori interest which the Government had promised to protect and sought above all to ensure all New Zealanders that they would be treated fairly. Their "mixed" reception reflected some concern that the Government might be rewriting the text of the Treaty itself. Others, however, had supported them as being necessary to dispel doubt and confusion.

53. The need to increase the Waitangi Tribunal's membership had resulted from its heavy case-load. With regard to the selection of its members, the Treaty of Waitangi Amendment Act of 1988 provided that the Tribunal should consist of the Chief Judge of the Maori Land Court and of not less than two and not more than 16 other members, to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs, made after consultation with the Minister of Justice. At the present time, the Tribunal had eight Maori members and eight European members. As the Chief Judge was a Maori, there was a majority of Maori on the Tribunal. The Chief Judge had pointed out that the Tribunal's basic approach sought to take into account the Maori process of debate and conciliation, because the Tribunal was not concerned solely with righting past wrongs but with finding new formulae to prevent the recurrence of such wrongs.

54. With regard to the question whether land currently in private hands could be subject to claims under the Treaty, honouring the Treaty meant returning land and other resources taken illegally or providing adequate compensation. But, as the Tribunal had stated, the resolution of one injustice should not be seen to create another, and private land would not be expropriated to settle grievances arising in relation to the Treaty.

55. With respect to the Maori Land Court, all New Zealanders had equal access to the courts, both civil and criminal. The Maori Land Court had been established in 1953, to deal with questions relating to Maori land which, because of the system of multiple ownership under Maori custom, gave rise to special issues. However, its jurisdiction could extend to other sections of the population. Decisions taken by the High Court or the Court of Appeal were binding on the Maori Land Court.

56. While it was compulsory for voters to register, it was not compulsory for them to vote. Maori, including persons of Maori descent, could, when registering, opt for inclusion in either a Maori or a general roll. That had been the case since 1975 and the amendment introduced in 1989 referred solely to a statistical attribution of persons who did not in fact register in any electorate.

57. Referring to the question of the under-representation of the Maori in Parliament, he said that the four Maori seats were held by Maori. In addition, there were people who were elected on the general roll who claimed Maori descent.

58. As to the comparative unemployment rate between Maori, Pacific Islanders and Europeans, according to the 1986 census, the percentage figures for the unemployed in New Zealand had been 13.9 per cent for Maori, 11.7 per cent for Pacific Island Polynesians, and 5.6 per cent for Europeans and other members of the population. The 1981 census revealed that the average income of Maori males in the workforce was $9,936 compared with $12,068 for non-Maori. The Government was seeking to increase the representation of Maori and Pacific Island Polynesians at all senior levels of responsibility, a goal that was being realized only gradually.

59. The preservation of Maori art objects had been a matter of some concern to the Government, which had accordingly passed the Antiquities Act to prevent illegal exports of Maori cultural artefacts. The Government was currently reviewing its policy in the cultural field.

60. With regard to the Bill of Rights, the original proposal had been for an entrenched bill. The power given to the judiciary under that proposal was the main reason for opposition to it, since New Zealanders were concerned about what they perceived as a transfer of power from elected representatives to judges who were appointed to office.

61. On the question of the repeal of section 9A of the Race Relations Act, as noted in paragraph 16 of the report, the Race Relations Conciliator himself had recommended the repeal on the ground that the definition of the level at which language became abusive was unsatisfactory, leading to a large number of trivial complaints by members of the public and preventing the Conciliator's office from focusing on more important aspects of its task in preventing racial discrimination and promoting racial harmony.

62. With regard to Maori educational achievements, the question had been raised whether the Te Kohanga Reo programme would lead to a separation between Maori and other citizens contrary to the spirit of the Convention. The impetus for the programme and other similar Maori language programmes had come from the Maori themselves and was based on the value they attached to their culture and language. There was no question of any conflict with the Government's policy of promoting biculturalism. The Government was strongly committed to the creation of a multicultural society in which all New Zealanders were valued members and in which racism had no place.

63. The Ministry for Pacific Island Affairs was concerned with Pacific Islanders and people of Pacific Island descent living in New Zealand. The Ministry of Maori Affairs had Maori officers, including the head of the Department, but the staff was not exclusively Maori.

64. Economic restructuring, which had had an impact, particularly on the Maori communities, had been necessary in order to open up New Zealand's economy on an internationally competitive basis. The Government had taken account of the impact on the Maori people and had set up a number of vocational training and employment programmes. Restructuring had, however, affected all sectors of the New Zealand economy. The industries singled out in the report were those in which the Maori people were highly represented.

65. Ms. HIGGIE (New Zealand), referring to a question put by Mrs. Sadiq Ali relating to paragraph 125 of the report (CERD/C/184/Add.5), said that the text was intended to show that the Government rejected the concept of a dual criminal justice system. It was therefore seeking to set up a single criminal justice system that was as culturally sensitive as possible. That was one of the reasons behind the maatua whangai programme.

66. She had also asked whether any Indians had emigrated to New Zealand from Fiji. The table on page 8 of the report did not provide a breakdown according to ethnic origin and referred only to the country of nationality. She was, however, aware that many of the immigrants from Fiji were of Indian origin.

The meeting rose at 6.15 p.m.

878th meeting

Thursday, 16 August 1990
at 10.15 a.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Eighth and ninth periodic reports of New Zealand (CERD/C/184/Add.5) (concluded)

At the invitation of the Chairman, Mr. Hannah (New Zealand) took a place at the Committee table.

1. Mr. HANNAH (New Zealand) said that he would like to answer the questions which had not been dealt with at the preceding meeting. With regard to the membership of the Maori Land Management Committees, he said that the Government would be contravening the policy it had adopted towards all Maori issues if it tried to guide the Land Management Committees in any way, since their main purpose was to promote the development and better use of Maori land.

2. Referring to statistics of Maori in prison, he said that the figure he had was 48.8 per cent. Against that background, the maatua whangai programme 1/ for placing offenders in the care of the local Maori community was particularly important, since it offered an alternative to penal institutionalization. Nevertheless, the Government's aim was to prevent the establishment of a dual system of justice and to work towards a culturally sensitive common legal system based on the principle that all New Zealanders were equal under the law (CERD/C/184/Add.5, para. 125).

3. Mr. Yutzis had drawn attention to the views of the Court of Appeal on the Treaty of Waitangi (CERD/C/184/Add.5, para. 41). There was no doubt that the judges' conclusions should be regarded as their restatement of important obligations under the partnership established by the Treaty.

4. His Government's aim was to reduce some of the gaps which existed between the Maori and the rest of the population of New Zealand but it was not trying to suppress differences that were a facet of Maori cultural specificity; hence the clarification in subparagraph 2 of paragraph 60 of the consolidated periodic report ("and that do not result from individual or cultural preferences").

5. As to government encouragement of Maori enterprises, he said it was obvious that such encouragement was allowed under article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination. In the overall policy context, moreover, promoting Maori participation in business by methods that could help to overcome cultural obstacles had positive effects.

6. In conclusion, he thanked the members of the Committee for the interest they had shown in New Zealand and said that he would take the necessary steps

to ensure that the report and the summary records of the Committee's discussions were widely circulated in accordance with the wish expressed by Mr. Wolfrum.

7. The CHAIRMAN again thanked the Government of New Zealand for its report, which, in many respects, could be regarded as exemplary. He said that the Committee had concluded its consideration of the eighth and ninth periodic reports (CERD/C/184/Add.5) of New Zealand.

Mr. Hannah (New Zealand) withdrew.

Tenth and eleventh periodic reports of the Union of Soviet Socialist Republics (CERD/C/172/Add.6 and CERD/C/197/Add.1)

At the invitation of the Chairman, Mr. Tarazevich, Mr. Ilyukhim, Mr. Ignatov, Mr. Loshchinin, Mr. Ermishin (Union of Soviet Socialist Republics) took places at the Committee table.

8. Mr. TARAZEVICH explained to the Committee that his country was currently in a particularly complex and difficult situation. The upheavals taking place in the Union of Soviet Socialist Republics had far-reaching effects on every aspect of society. As could be seen simply by comparing the two periodic reports (CERD/C/172/Add.6 and CERD/C/197/Add.1) submitted to the Committee, the legal system had undergone major changes. The introduction of democratic processes and of mechanisms to guarantee citizens' liberties, together with the further separation of powers, were helping to establish a State subject to the rule of law. New bodies had been set up, such as the Committee for Constitutional Supervision, which was the first of its kind in the Soviet Union and would make a key contribution to the observance of the country's constitutional bases. Furthermore, the Supreme Soviet had adopted amendments to the Constitution with a view to ensuring genuine political pluralism. The establishment of the post of President of the Soviet Union had also been a decisive step in the process of democratization. The President of the Soviet Union would also have a vital role to play in unifying the country.

9. While the various national groups were already represented on the Council of Nationalities, several draft laws had been introduced in the Supreme Soviet with a view to improving their representation in all political bodies in the country. He drew particular attention to a draft law on the distribution of powers between the Union and the various republics and a draft law on languages. A number of ad hoc committees had been set up, for example, to study relations between nationalities and the conformity of new laws with the obligations of the Soviet Union under the Convention and other international instruments. All the Republics now had their own Administration, which had broad powers.

10. Relations between the State and its citizens had also improved. The post of President of the Soviet Union had become the guarantee of the equality of all citizens. Draft laws on the rights of the citizen were being prepared, inter alia, on the right freely to enter and leave the country. In addition, the Supreme Soviet had recently adopted a law on freedom of conscience and religion which gave religious organizations a clear legal status and the right

to take part in the political life of the country. New laws on psychiatry were also being considered with a view to preventing any abuse of psychiatric power.

11. The Soviet Union was opposed to all forms of racism in general and apartheid in particular. On many occasions, it had called for the establishment of a democratic State in South Africa taking account of the interests of all parties concerned. In that connection, it welcomed the recent agreements reached in Namibia and the release of Mr. Mandela.

12. He stressed, however, that the broad process of democratization was causing many problems for relations between the Union and the Republics. Perestroika and glasnost had given fresh impetus to ethnic aspirations, with national groups demanding the right to self-determination and the development of their own cultures. Those tensions had been further aggravated by the crisis rocking the power structures and by the economic problems the Soviet Union was experiencing. The Government was therefore working on a number of agreements to stabilize the country's political situation and create the necessary conditions for a consensus which would take account of the interests of the entire population.

13. The Supreme Soviet had promulgated a law to prevent the forced displacement of populations. The purpose of such forced migrations had been to move small populations scattered throughout a number of regions to major urban centres, but the balance in some parts of the country had been seriously upset as a result. The solution to the migration problem, which concerned millions of persons, required carefully considered decisions. Committees of experts had been set up for that purpose and the Union was paying particular attention to the issue.

14. All the laws mentioned would be adopted in the autumn after being considered in the light of international instruments and the experience of other European countries.

15. In conclusion, he pointed out that his country's restructuring was designed to eliminate all forms of racial discrimination and that it could not be successful without the assistance of the international community as a whole. He was at the Committee's disposal for any further information it might need.

16. The CHAIRMAN invited the specially appointed Rapporteur, Mr. Foighel, to take the floor.

17. Mr. FOIGHEL said that the extraordinary developments in the Soviet Union were extremely encouraging. The country was moving rapidly towards democracy and the new importance it attached to human rights was apparent from the fruitful dialogue it had established with the Committee. However, its eleventh periodic report (CERD/C/197/Add.1) raised a number of questions.

18. On page 2, the report stated that 65 nationalities were represented in the Congress of People's deputies and that there were 15 Jewish deputies. He questioned whether the term "nationality" was appropriate in that particular

case. Could a non-believing Jew or one who had changed religion ask not to be considered a Jew? Similarly, could a person who had been born in Georgia, but had spent all his life in Moscow, refuse, in exercise of his right to self-determination, to be registered as a Georgian?

19. Noting that the Committee for Constitutional Supervision monitored the conformity of the Constitution with, inter alia, international treaties, he asked whether such treaties became an integral part of internal law once they had been ratified and whether Soviet citizens could invoke them in court.

20. Page 5 of the eleventh periodic report referred to "severe and unresolved national antagonisms" which threatened democratization. That was a very complicated problem that involved the conflict between the right to self-determination and secession, on the one hand, and the rights of national minorities, on the other. In that connection, the Scandinavian countries were of the opinion that central Government had adopted a very hard line towards the Baltic Republics. He wished to know what the Government's attitude would be if other national minorities wanted to exercise their right to self-determination.

21. With regard to article 4 of the Convention, the law adopted by the Soviet Union on 2 April 1990 was an important step forward. It was an unfortunate fact that racism was prevalent in every country and he asked whether the courts or authorities had taken any specific measures against the racist and anti-Semitic PAMYAT movement. He also wished to know how the Soviet Union interpreted the concepts of freedom of association and freedom of expression in the context of article 4 and what compensation it gave to victims of racist attacks.

22. Lastly, he congratulated the Soviet Union on the many changes being made to its legislation, which, for example, now allowed citizens to enter and leave the country freely, and the decision taken by the Presidium of the Supreme Soviet to withdraw the Soviet reservations regarding the compulsory jurisdiction of the International Court of Justice. That crucial decision marked the beginning of a new era in international relations.

23. Mr. WOLFRUM, recalling that, towards the end of 1989, the Armenian Parliament had voted for the return of Nagorny Karabakh to the Soviet Socialist Republic of Armenia and that that decision had been ruled anti-constitutional by the central Government, said that he would like to know how the situation had developed since. He also asked what the authorities intended to do in order to prevent any repetition of the ethnic violence which had resulted in many casualties and led to a genuine exodus of refugees in various parts of the Soviet Union. He also asked about the results of the criminal proceedings instituted in Moscow, for the first time ever, against the authors of an anti-Semitic article published in a student newspaper.

24. Mr. CARVALOV, commending the Soviet Union on the frankness of its eleventh periodic report (CERD/C/197/Add.1), said that the country was moving courageously in the right direction, but, because of the extreme complexity of the problems it faced, it would probably need some time to settle ethnic differences and ensure that all citizens could fully enjoy their civil,

political, economic, social and cultural rights. He could only welcome the decision taken by the Soviet Union to withdraw its reservation regarding the compulsory jurisdiction of the International Court of Justice, as Bulgaria also intended to do.

25. It would be helpful to have some details on the implementation of article 4 of the Convention and, in particular, to know whether cases of racial discrimination had been brought before the courts and what the results had been. He also expressed his surprise that Bulgarians were not represented in the Congress of People's Deputies of the Soviet Union, while other smaller minorities were. Lastly, he wished to know whether ethnic political parties were authorized in the Soviet Union and, if not, whether there were any safeguards to prevent their formation.

26. Mr. de GOUTTES welcomed the quality, sincerity and objectivity of the eleventh periodic report of the Soviet Union (CERD/C/197/Add.1) and stressed that the problems encountered, particularly with regard to the economy and ethnic violence, had been lucidly analysed.

27. He asked whether the Committee for Constitutional Supervision of the Soviet Union would examine the conformity between the Constitution of the Soviet Union and the country's international treaties and other commitments before the ratification procedure had been initiated and what would happen, in view of the precedence of treaties over laws, if the Committee ruled that the Constitution was not in conformity with an international instrument.

28. The eleventh periodic report stated that the so-called "political" articles had been eliminated from the Penal Code. Did that mean that there were no longer any crimes relating to political opinions, for example, with regard to anti-Soviet propaganda and anti-social religious activities. According to the 1989 Amnesty International Report, some persons had been sentenced for such activities.

29. He would also like to have further details on measures to give effect to the law of 3 April 1990 concerning the settlement of questions connected with the secession of Union Republics from the Soviet Union (ibid., p. 8) and asked whether any Republics were intending to use the referendum referred to in that law.

30. Lastly, he said that he wished to know what legislative measures had been taken to regulate psychiatric internment and prevent any abuses in that regard.

31. Mrs. SADIQ ALI, congratulating the Soviet Union on the quality of its eleventh periodic report (CERD/C/197/Add.1) and the efforts it had made to improve the lives of individuals and national minorities, asked what attitude towards the Convention the federal authorities would take in future. On that and other points it would be helpful to have detailed texts.

32. She would also like the Committee to be given information on the reform of the judiciary, as well as the actual texts of the laws mentioned on pages 3 and 4 of the eleventh periodic report, particularly those relating to article 5 (a), (b), (c) and (d) (i) of the Convention, and the texts of the

laws which were referred to on page 7 of the report and which granted national Republics extensive rights in the solution of problems relating to their development.

33. The third full paragraph on page 8 stated that Autonomous Republics possessed the full range of State power in their territory, except for powers which they had transferred to the Soviet Union and the Union Republics. She wished to know which powers fell into that category. It was also stated on page 8 of the eleventh periodic report that a Union Republic had the right freely to secede from the Soviet Union by means of a referendum, but that the results of a referendum were treated separately in places where national minorities formed the bulk of the population and that the status of the territories inhabited by those national groups would be agreed on subsequently. She wished to know whether those national groups also had the right to secede from the Soviet Union.

34. She also asked what was being done for the development of the 5,000 Nentsy living in the Yamal Peninsula in Siberia and to raise the standard of living of the Siberian population in general, which wanted to control the vast natural resources in its territory.

35. She asked whether the PAMYAT organization was a fascist movement and whether its activities were being monitored.

36. Lastly, she said that she would like to have details on the origin and present situation of the Meskhetin Turks. She also wished to know what measures had been taken to solve the housing crisis in the Soviet Union.

37. Mr. FERRERO COSTA said that he would like to know how much sovereignty the autonomous republics had, particularly with regard to capacity to conclude international treaties. He asked whether all the Union Republics would acquire the same international status as Byelorussia, for example, or whether the status quo would be maintained.

38. While article 72 of the Constitution of the Soviet Union stated that every Union Republic had the right freely to secede from the Soviet Union, in practice, the exercise of that right encountered some obstacles, as shown by the case of Lithuania, which had proclaimed its independence before the law of 3 April 1990 had been promulgated. He requested clarifications on that issue.

39. The law of 3 April 1990 stated that the basis for the secession of a Union Republic from the Soviet Union was the free expression of the will of its peoples by means of a referendum, in which all citizens of the Soviet Union who were permanently resident in the territory of the Republic at the time of the referendum could take part (CERD/C/197/Add.1, p. 8, sixth full paragraph). He wished to know who would organize the referendum and what was meant by "permanently resident ... at the time".

40. The law also stated that, during the transitional period, a number of matters had to be settled jointly (p. 9, first paragraph). If the parties could not reach an agreement on an issue, he wondered who would settle it.

Lastly, he noted that, since it was the role of the Congress of People's Deputies of the Soviet Union to confirm the completion of the process of reconciling the interests of the parties concerned (p. 9, fifth paragraph), the final decision seemed to be taken by the central Government and the exercise of the right to self-determination might prove difficult.

41. Mr. SONG Shuhua said that the eleventh periodic report (CERD/C/197/Add.1) of the Soviet Union described the far-reaching changes currently taking place in the country. He hoped that the implementation of the many laws which had just been promulgated would contribute to the prosperity of Soviet citizens, including minorities, and particularly those living in remote or backward areas.

42. Mr. VIDAS paid a tribute to the Soviet Government for its willingness to cooperate with the Committee. He reaffirmed that only democracy could create conditions to promote respect for human rights in general and those enshrined in the Convention in particular.

43. He associated himself with the quetions asked by Mr. Foighel, Mr. Ferrero Costa and Mr. Wolfrum and said he hoped that the Government of the Soviet Union would reply to them through its representative at the current session or in its next report.

44. Mr. BANTON said that the members of the Committee were fully aware of the complexity of the problems faced by the Soviet Union. It was also interesting to note that the Government was admitting more and more that problems involving minorities in the Soviet Union were the same as those experienced by other countries. In that connection, it was doubtful that it would be possible, or even desirable, to ban ethnic political parties.

45. Although he shared practically all the views expressed by Mr. Foighel, he did not agree that the measures taken by the Soviet Government in connection with the Baltic Republics had been adopted on ethnic grounds or for reasons relating to nationality. He therefore did not think that the issue came within the scope of the Convention, although that was clearly not the case of the dispute between Armenia and Azerbaijan. In that connection, some of the information provided by the Soviet Union, particularly concerning certain human rights and social services, did not really belong in the report, since there was no reason to assume that there had been any racial discrimination in the provision of those services. Some of the questions raised by the members of the Committee also did not relate to the Convention and the Soviet Union therefore did not have to answer them.

46. In conclusion, he said he was afraid that problems could only get worse in the Soviet Union, partly because the population had such high expectations.

47. Mr. AHMADU welcomed the quality of the eleventh periodic report (CERD/C/197/Add.1) of the Soviet Union. It was an excellent document, but, in view of the rapid pace of the changes now taking place, it should perhaps be regarded more as a progress report. It did not go into enough detail on the right to freedom of movement and the right of Union Republics to secede,

especially the Ukraine, Byelorussia, the Baltic Republics and the Republics in the Caucasus. He would therefore like the representative of the Soviet Union to provide additional information on that question. With regard to the implementation of article 3 of the Convention, the African countries and the entire world were grateful to the Soviet Union for its active support for the anti-apartheid struggle and he hoped that that support would be maintained until the final victory.

48. During a recent visit to Soviet Central Asia, he had heard of far more Muslim religious communities than the figure given in the additional information provided in a separate document by the Soviet delegation and he would like to know how that difference could be explained.

49. Mr. SHERIFIS thanked the Soviet delegation for the many valuable clarifications it had given the Committee. The eleventh periodic report (CERD/C/197/Add.1) was clear and frank and should, without doubt, be credited to the new thinking currently prevalent in the Soviet Union. As Ambassador of Cyprus to the Soviet Union, he had seen how rapidly the exercise of freedoms had developed since Mr. Gorbachev's arrival. For example, he had observed that the churches were not only full, but that many young people attended them and, in 1985, he had been able to listen to debates in the Congress of People's Deputies which had been as lively and as free as those in any Western parliament. He welcomed the decision of the Council of Ministers of the Soviet Union to withdraw the reservations regarding the jurisdiction of the International Court of Justice (see, in particular, art. 22 of the Convention). Lastly, he was inclined to think, like Mr. Banton, that the secession of the Baltic Republics was not a matter of concern to the Committee, since it had little to do with ethnic or racial factors.

Mr. Ferrero Costa (Vice-Chairman) took the Chair.

50. Mr. YUTZIS urged the members of the Committee to be very cautious in their assessment of the human rights situation in the Soviet Union because of the exceptional historic circumstances in that country. He pointed out that history was unpredictable, as could be seen from the reports (CERD/C/197/Add.1) under consideration and the comments made by the Soviet delegation. Nobody would have thought just a few years previously that a representative of the Soviet Union could be heard making such statements. Secondly, he recalled that the Working Group set up by the Commission on Human Rights to draft a declaration on the rights of minorities had found that the exercise of the rights of minorities faced another major obstacle which was the sovereignty of States. That was the issue discussed on pages 8 and 9 of the report. In his view, the Soviet Union would help to solve the problem by working towards a consensus within the Working Group so that an agreement on the rights of minorities could subsequently be drawn up.

51. He had been in the Soviet Union at the time of the celebrations to mark the millenium of the baptism of Russia and he had heard Mr. Gorbachev tell an audience which had included many Orthodox prelates that the Russian Church was part of Soviet culture. That statement was highly significant and of interest to the Committee, since religion and national culture often went hand in hand. Just as surprising was Mr. Tarazevich's statement that religious

organizations had been granted the right to take an active part in political life. If that was indeed the case, the Soviet Union had taken quite a step forward. He asked Mr. Tarazevich to provide further information on that question.

52. Drawing a distinction between two aspects of power, namely, power over objects (mainly material wealth) and the power of prestige, he said that, if the two were combined, the consequences could be very harmful. The Soviet Union was going through a period of far-reaching changes at every level and the problem of power - and therefore the problem of the possible combination of the two kinds of power - would be of crucial importance. It was to be hoped that the State would be able to find a balanced solution which would satisfy the population's aspirations for greater freedom and autonomy, while protecting it from extremes. It also had to be able to avoid its own disintegration without oppressing those who wanted their identity to be recognized.

The meeting rose at 12.50 p.m.

Notes

1/ See CERD/C/131/Add.9, para. 23.

879th meeting

Thursday, 16 August 1990
at 3.05 p.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Tenth and eleventh periodic reports of the Union of Soviet Socialist Republics (CERD/C/172/Add.6 and CERD/C/197/Add.1) (concluded)

At the invitation of the Chairman, Mr. Tarazevitch, Mr. Iliukhin and Mr. Ignatov (Union of Soviet Socialist Republics) took places at the Committee table.

1. Mr. TARAZEVITCH (Union of Soviet Socialist Republics) said that his delegation welcomed the constructive attitude shown by members in considering his country's periodic reports (CERD/C/172/Add.6 and CERD/C/197/Add.1). The Soviet Union would take account of the useful views that had been expressed when it was drafting new legislation.

2. Referring to questions concerning the self-determination of the various ethnic groups in the Soviet Union secession from the Union by Republics, he said that self-determination was a constitutional provision. It had been reflected in the first Treaty of Union which had been signed in 1922 and which had established the Union. In declaring the right to self-determination, the legislators had not thought that the time would come when it would be necessary to devise procedures for the exercise of that right. At the present time, there were strong separatist tendencies in the Union and questions had arisen in connection with the declared intention of some Republics to secede from the Union. The first country to declare such a intention had been Lithuania and it had been necessary to create democratic machinery that would enable Republics to exercise that right. New legislation had thus recently been enacted under which the basis for the secession of a Union Republic from the Soviet Union was the free expression of the will of its peoples by means of a referendum. Where the population of a Republic included compact entities of a different nationality, such entities had the right to take an independent decision on the question of remaining in the Soviet Union. The results of a referendum were treated separately in places where national minorities formed the bulk of the population. If an autonomous entity decided by means of a referendum not to leave the Union, it could either remain in the Union or request some other status. Where the results were negative, only the autonomous minority could take a decision on its destiny.

3. Where a Republic took a decision to secede from the Soviet Union, there were many matters which required joint settlement and a transitional period of five years had therefore been established.

4. With regard to the specific case of Lithuania, as that Republic occupied a central place in the Union, problems had arisen following its unilateral declaration of secession. Relations had worsened and economic sanctions had